



JOHN J. TECKLENBURG
MAYOR

City of Charleston
South Carolina
Clerk of Council Department

VANESSA TURNER MAYBANK
CLERK OF COUNCIL

NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 3:30 p.m., July 19, 2016, at Gaillard Center, 95 Calhoun Street. The agenda will be as follows:

AGENDA

Invocation – Councilmember Moody

Approval of Minutes: June 20, 2016

- a. Authorize the Mayor to execute the Amended and Restated Transfer & Development Agreement, previously referred to as Transfer & Development Agreement I, including Exhibits B & D, the Affordable Rental Housing Restrictive Covenant Agreement and the Development Agreement between the City of Charleston, as Owner and the Housing Authority of the City of Charleston as Developer. The Agreements set forth the expectation of the parties regarding the conveyance and development of the parcels or tracts of land (or portion thereof) for development of 60 affordable homes; fifty-five (55) of which would serve as rental apartments for persons earning thirty (30%) percent to one hundred and fifty percent (150%) of the Area Median Income and five (5) homes would serve as for-sale housing for persons earning no more than one hundred and twenty percent (120%) of the Area Median Income. (TMS: 459-05-04-207 and 459-05-04-216; Parcel A and Parcel J within the Cooper River Bridge Development Area bound by Meeting, Lee, Hanover, & Cooper Streets in the City of Charleston) [Ordinance] The property is owned by the City of Charleston.
- b. (i) Request approval for the Mayor to execute the attached Lease Amendment between the City and Tour Management Services, Inc. whereby the terms of the leased premises in the Charleston Maritime Center will be modified in regards to days and hours of operation, rent and permitted equipment

- (ii) Request approval for the Mayor to execute the attached License Agreement between the City and Tour Management Services, Inc. whereby the City grants a license to Tour Management Services to use an area of slip space at the Charleston Maritime Center for the sole use of the vessel, Carolina Belle. (TMS: 459-00-00-169; 10 Wharfside Street) [Ordinance] The property is owned by the City of Charleston.
- c. Request approval for the Mayor to execute the attached Memorandum of Understanding between First Baptist Church Foundation and the City whereby First Baptist will construct a road on a portion of the City's property at no cost to the City. (TMS: 428-00-00-013, 428-00-00-040; Fort Johnson Road.) The property is owned by the City of Charleston.
- d. Request authorization for the Mayor to sign the Fourth Amendment to Development Agreement (Daniel Island, Berkeley County) [Ordinance] This property is owned by the City of Charleston and Daniel Island Associates, LLC and its affiliates.

a.)

REAL ESTATE COMMITTEE
GENERAL FORM

TO: John J. Tecklenburg, Mayor DATE: July 18, 2016

FROM: Geona Shaw Johnson DEPT: HCD

ADDRESS: Parcel A and Parcel J within the Cooper River Bridge Development Area bound by Meeting, Lee, Hanover & Cooper Streets in the City of Charleston

TMS: 459-05-04-207 and 459-05-04-216

Authorize the Mayor to execute the Amended and Restated Transfer & Development Agreement, previously referred to as Transfer & Development Agreement I, including Exhibits B & D, the Affordable Rental Housing Restrictive Covenant Agreement and the Development Agreement between the City of Charleston, as Owner and the Housing Authority of the City of Charleston as Developer. The Agreements set forth the expectation of the parties regarding the conveyance and development of the parcels or tracts of land (or portion thereof) for development of 60 affordable homes; fifty-five (55) of which would serve as rental apartments for persons earning thirty (30%) percent to one hundred and fifty percent (150%) of the Area Median Income and five (5) homes would serve as for-sale housing for persons earning no more than one hundred and twenty percent (120%) of the Area Median Income.

ACTION REQUEST:

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

	<u>Signature</u>	<u>Attachments</u>
Department Head	<u>Geona Shaw Johnson</u>	<input checked="" type="checkbox"/>
Legal Department	<u>Frances J. Cantwell</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input checked="" type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

FUNDING: Was funding needed? Yes ☒ No ☐

If yes, was funding previously approved? Yes ☐ No ☐

*If approved, provide the following: Dept/Div. _____ Acct: _____

Balance in Account _____ Amount needed for this item _____

NEED: Identify any critical time constraint(s).

COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: July 18, 2016

FROM: Geona Shaw Johnson DEPT: HCD

ADDRESS: Parcel A and Parcel J within the Cooper River Bridge Development Area bound by Meeting, Lee, Hanover & Cooper Streets in the City of Charleston

TMS: 459-05-04-207 and 459-05-04-216

Authorize the Mayor to execute the Amended and Restated Transfer & Development Agreement, previously referred to as Transfer & Development Agreement I, including Exhibits B & D, the Affordable Rental Housing Restrictive Covenant Agreement and the Development Agreement between the City of Charleston, as Owner and the Housing Authority of the City of Charleston as Developer. The Agreements set forth the expectation of the parties regarding the conveyance and development of the parcels or tracts of land (or portion thereof) for development of 60 affordable homes; fifty-five (55) of which would serve as rental apartments for persons earning thirty (30%) percent to one hundred and fifty percent (150%) of the Area Median Income and five (5) homes would serve as for-sale housing for persons earning no more than one hundred and twenty percent (120%) of the Area Median Income.

ACTION REQUEST:

ACTION: What action is being taken on the Property mentioned?

<input type="checkbox"/>	ACQUISITION	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	DONATION/TRANSFER	Donated By: _____	
<input type="checkbox"/>	FORECLOSURE	Terms: _____	
<input type="checkbox"/>	PURCHASE	Terms: _____	
<input type="checkbox"/>	CONDEMNATION	Terms: _____	
<input type="checkbox"/>	OTHER	Terms: _____	

<input checked="" type="checkbox"/>	SALE	Seller (Property Owner) <u>City of Charleston</u>	Purchaser <u>City of Charleston Housing Authority</u>
<input checked="" type="checkbox"/>	NON-PROFIT ORG, please name	<u>City of Charleston Housing Authority</u>	
	Terms:	<u>As outlined in the Amended Transfer & Development Agreement</u>	

COMMERCIAL REAL ESTATE FORM

☐

OTHER

Terms: _____

☐

EASEMENT

Grantor
(Property Owner)

Grantee

☐

PERMANENT

Terms: _____

☐

TEMPORARY

Terms: _____

☐

LEASE

Lessor: _____

Lessee: _____

☐

INITIAL

Terms: _____

☐

RENEWAL

Terms: _____

☐

AMENDMENT

Terms: _____

☐

Improvement of Property

Owner: _____

Terms: _____

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes

☐

No

☐

N/A

☒

Results: _____

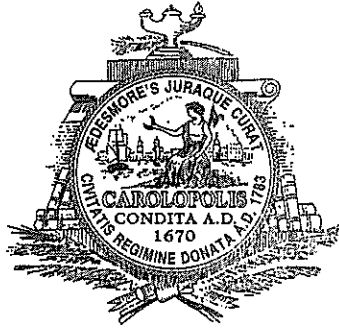
Signature: _____

Colleen Carducci

Director Real Estate Management

ADDITIONAL : Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

NEED: Identify any critical time constraint(s).



Ratification
Number _____

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AMENDED AND RESTATED TRANSFER AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE CITY OF CHARLESTON HOUSING AUTHORITY.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City an Amended and Restated Transfer and Development Agreement between the City and the City of Charleston Housing Authority, a copy of said Amended and Restated Transfer and Development Agreement being attached to this Ordinance as Exhibit A and made a part hereof.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of _____
in the Year of Our Lord, 2016,
and in the _____th Year of the Independence of
the United States of America

John J. Tecklenburg, Mayor

ATTEST:

Vanessa Turner Maybank
Clerk of Council

)

THIS AMENDED AND RESTATED TRANSFER AND DEVELOPMENT AGREEMENT (this “*Transfer Agreement*” or “*Agreement*”) is made and entered into as of the _____ day of _____, 2016 (the “*Effective Date*”), by and between the CITY OF CHARLESTON, a South Carolina municipal corporation (the “*City*”), and HOUSING AUTHORITY OF THE CITY OF CHARLESTON (the “*Developer*”) (each, a “*Party*,” and together, the “*Parties*”).

WHEREAS, on or about September 9, 2015, the City and the Developer entered into that certain Transfer and Development Agreement, which contemplated that the City would convey certain parcels of real property to the Developer and the Developer would redevelop those properties pursuant to the terms of said agreement (the “*Original T&D Agreement*”);

WHEREAS, subsequent to the execution of the Original T&D Agreement, there have arisen certain circumstances that militate in favor of the Parties modifying certain terms of the Original T&D Agreement, including, *inter alia*, the designation of the relevant parcels of real property to be conveyed by the City to the Developer;

WHEREAS, the Parties have agreed to amend and restate the Original T&D Agreement pursuant to this instrument;

WHEREAS, each of the Parties has specific interests in the redevelopment of certain properties located in the City of Charleston in the vicinity of the southern intersection of Lee Street and Nassau Street so that the Developer may own, hold, manage and/ or lease a portion of the properties to low- and moderate-income individuals and families and the Authority, with the approval of the City, shall be authorized to (i) sell a portion of the properties to buyers earning no more than 120% of the Area Median Income established and published by HUD as hereinafter defined, and (ii) and lease a portion of the properties to renters earning no more than 150% of the Area Median Income, all as more specifically contemplated herein (the “*Redevelopment*”);

WHEREAS, the Parties each have assets and/ or resources that are needed for the Redevelopment, and each Party has expressed a shared desire to utilize these assets to facilitate the Redevelopment in keeping with the goals of both entities;

WHEREAS, the City acquired, via Quit Claim Deed, all right, title and interest of the SCDOT in and to two (2) parcels of real property located in the City of Charleston in the vicinity of the southern intersection of Lee Street and Nassau Street, designated as Parcel A (“*Parcel A*”) and Parcel J (“*Parcel J*,” and together with Parcel A, the “*City Parcels*”) on the plat attached hereto as Exhibit A (the “*Plat*”);

WHEREAS, the City anticipates that it will acquire a portion of the parcel of real property designated as Parcel I on the Plat (the ***“Parcel I Portion”***), and while it is possible that the Parcel I Portion

would be added to the Charleston County TMS# associated with Parcel J, the Developer acknowledges that City will only convey that portion of Parcel J as it is shown on the Plat (and the City may at its option record a subdivision plat to clarify the legal description of Parcel J); and

WHEREAS, the City may obtain contracts to purchase additional parcels in the vicinity of the City Parcels (each, a “*Future Parcel*,” and collectively, the “*Future Parcels*”);

WHEREAS, in the event the City secures a contract to purchase one or more of the Future Parcels prior to Closing (as hereinafter defined), so long as the City agrees to fund the purchase, the Developer agrees to accept an assignment of the contract to purchase and close on such contract to purchase, and each such Future Parcel shall be included in the definition of “City Parcels” for purposes of this Transfer Agreement;

WHEREAS, in the event the City secures a contract to purchase one or more of the Future Parcels after Closing, so long as the City agrees to fund the purchase, the Developer agrees to accept an assignment of the contract to purchase and close on such contract, and each such Future Parcel shall be subject to the terms of the Development Agreement to be executed by the Parties as contemplated herein;

WHEREAS, the Developer shall be responsible for developing and constructing a minimum of approximately sixty (60) housing (the “*Units*”) within the Redevelopment, which shall be made affordable to end buyers and tenants as set forth herein;

WHEREAS, as used herein, the term “*Area Median Income*” shall mean and have reference to the median family income for the Charleston-North Charleston Metropolitan Statistical Area as established and published by the United States Department of Housing and Urban Development;

WHEREAS, as more fully set forth in the Development Agreement (as hereinafter defined), construction of the Redevelopment shall be performed during the period commencing December 31, 2017 through December 31, 2019;

WHEREAS, in furtherance of the aforementioned redevelopment efforts, the City and the Developer have agreed on terms whereby the City shall sell and convey to the Developer, via Quit Claim Deed, all its right, title and interest in and to the City Parcels, and the Developer shall (i) own, hold, manage and/ or lease the housing units within the City Parcels to low- and moderate-income individuals and families, and (ii) with the approval of the City, sell housing units within the City Parcels to buyers earning no more than 120% of the Area Median Income and lease apartment units within the City Parcels to renters earning no more than 150% of the Area Median Income; and

WHEREAS, the City and Developer now wish to enter into this Agreement for the purpose of more particularly setting forth the terms and conditions by which the City Parcels shall be conveyed to Developer and Developer shall perform the Redevelopment.

W I T N E S S E T H:

NOW, THEREFORE, for and in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer agree as follows:

1. CONVEYANCE AND REDEVELOPMENT OF CITY PARCELS.

(A) Upon the terms and conditions set forth herein, the City agrees to sell, and the Developer agrees to purchase, the City Parcels (as depicted on the Plat) from the City.

(B) At the Closing, the City and the Developer shall execute and deliver the Development Agreement, which shall be substantially in the form attached hereto as Exhibit D (including agreement as to all exhibits thereto, the “*Development Agreement*”), setting forth the terms and conditions by which the Developer shall perform the Redevelopment. Notwithstanding the foregoing, during the Due Diligence Period, the Parties agree to finalize the specific terms and conditions of the Development Agreement.

2. PURCHASE PRICE OF CITY PARCELS. The purchase price for each City Parcel shall be **TEN AND NO/100 Dollars (\$10.00)**. The aggregate purchase price (i.e., up to \$50.00) shall be calculated based upon the number of City Parcels the City is conveying to Developer, and shall be paid by the Developer to the City at the Closing in cash or by electronic wire.

3. Representations and Warranties of the Developer: To induce the City to enter into this Transfer Agreement, the Developer represents and warrants to the City as follows:

(A) Due Organization: Developer is a public body corporate and politic duly organized and validly existing under the laws of the State of South Carolina, and is duly qualified and authorized to conduct business in the State of South Carolina with full corporate power to execute, deliver and perform the obligations and transactions contemplated in this Transfer Agreement.

(B) Due Authorization: The Developer and any officer, member, manager or partner executing this Transfer Agreement has full power, authority, and legal right to enter into this Transfer Agreement and to carry out the provision of this Transfer Agreement according to the terms hereof. The Developer has duly authorized the execution and delivery of this Transfer Agreement, and no other action of the Developer is requisite to the execution and delivery of this Transfer Agreement. No consents or approvals are required to be obtained from any Legal Authorities (as that term is defined in Exhibit F, attached hereto and incorporated herein by reference) for the execution and delivery of this Transfer Agreement.

(C) Violation of Other Agreements: The execution of this Transfer Agreement and the performance of the Developer pursuant to this Transfer Agreement does not and shall not (i) violate any provision of law or its organizational documents, or (ii) result in a breach of, constitute a default under, require any consent under, or result in the creation of any lien, charge, or encumbrance upon any property of the Developer pursuant to any instrument,

order, or other agreement to which the Developer is a party or by which the Developer, or any of its property is bound.

4. CLOSING. Unless otherwise agreed by the Parties in writing, the closing on the City Parcels (the “**Closing**”) shall take place on or before the date that is thirty (30) days after the end of the Due Diligence Period. Subject to the foregoing, the Closing shall take place in Charleston County, South Carolina, at a time, date and place mutually agreed to by the City and the Developer.

5. POSSESSION. The City shall give Developer possession of the City Parcels at the Closing, provided title has passed.

6. TITLE. At the Closing, the City shall convey all of its right, title and interest in and to the City Parcels by a Quit Claim Deed (the “**Deed**”), duly executed with revenue stamps in the proper amount affixed thereto. The Deed shall be delivered subject to the following:

- (A) The Affordable Rental Housing Restrictive Covenant Agreement, the form of which is set forth on Exhibit B attached hereto and incorporated herein by reference (the “**Rental Restrictions**”), which instrument shall be executed by the Developer and the City and recorded in the RMC Office for Charleston County prior to the Deed;
- (B) The Single Family Affordable Housing Restrictive Covenants, the form of which is set forth on Exhibit C attached hereto and incorporated herein by reference (the “**Sale Restrictions**”), which instrument shall be recorded in the RMC Office for Charleston County prior to the Deed;
- (C) The fully executed Development Agreement;
- (D) The list of permitted exceptions on Exhibit E (attached hereto and incorporated herein by reference, hereinafter the “**Permitted Exceptions**”); and
- (E) Such other matters as otherwise agreed to in writing by the City and the Developer.

Additionally, the Developer hereby acknowledges that the City Parcels, save and excepting any Future Parcels, will be conveyed to Developer subject to that certain Voluntary Cleanup Contract by and between the City and South Carolina Department of Health and Environmental Control (“**DHEC**”) Voluntary Cleanup Contract 11-6027-NRP dated September 23, 2011 (the “**VCC**”). The Developer shall, at its sole cost and expense, have the VCC amended so that the VCC includes all of the parcels within the Redevelopment, including all of the Future Parcels. Developer shall be responsible for (i) the preparation of a management plan, typically referred to as a Site Management Plan or Soil Management Plan, for management of contaminated soils and/ or groundwater disturbed during construction of the Redevelopment, and (ii) Developer’s receipt of a certificate known as a Certificate of Completion for the VCC from DHEC. The City shall use commercially reasonable efforts to cooperate with the Developer in such endeavor.

7. CLOSING COSTS. The City shall be responsible for the fees and expenses of the City's attorneys, the fees for the preparation of the Deed, the fees or taxes for documentary stamps due with respect to the Deed, and any other costs and expenses actually incurred by the City. The Developer shall be responsible for all other closing costs.

8. DUE DILIGENCE PERIOD. As used herein, the term "*Due Diligence Period*" shall mean the period beginning on the Effective Date and ending on the date that is six (6) months thereafter. Notwithstanding the foregoing, by authorizing this Transfer Agreement, City Council authorizes the Mayor of the City to grant the Developer one (1) extension of the Due Diligence Period for up to six (6) months.

(A) Activities during Due Diligence Period. During the Due Diligence Period:

i. Developer shall work to determine the final pricing of the Redevelopment, identity of contractors, architects and other professionals, and scope and design of the Redevelopment, as well as to determine all site design issues and the location and availability of access and utility easements serving the Redevelopment (all of the foregoing being subject to the City's final approval (which may be withheld in City's sole discretion);

ii. Developer shall work with a licensed surveyor to create the final form of Plat showing the City Parcels to be recorded at Closing and referred to in the Deed conveying the Property;

iii. Developer shall have the right: (A) to verify, inspect, investigate and review, City's documentation of any covenants, conditions and restrictions and other exceptions of title of record, and including, without limitation, documentation regarding any and all leases, cross-easements and other agreements affecting the property (including terms, conditions and assignability of the foregoing), (B) to verify, inspect, investigate and review, the condition of title to the property and the Plat, (C) to physically inspect the property including engineering investigation, (D) to conduct a valuation appraisal of the property, (E) to verify, inspect, investigate and review, environmental condition of the Property (including conducting a Phase I Environmental Assessment (the "*Phase I*") and if recommended by the Phase I, but only upon the written consent of the City, which the City may withhold in its sole and absolute discretion, a Phase II Environmental Report (the "*Phase II*"), (F) to verify, inspect, investigate and review, any and all other documentation or evidence relating to the ownership, value, construction, income, expense, operation, leasing, options and maintenance and repair of the Property (G) to go onto the property (or allow its agents, employees or contractors to go onto the Property), as Developer deems necessary, in connection with any of the foregoing, and (H) to conduct the Pre-Closing Work described in, and subject to the terms contained in, Exhibit G attached hereto and incorporated herein by reference (A through E above, the "*Developer's Inspection Activities*"). City shall cooperate with Developer in connection with Developer's Inspection Activities.

(B) Mutual Right of Termination; Execution of Satisfactory Due Diligence Letter.

i. If for any reason whatsoever either party determines in its sole and absolute discretion that the transaction is unsuitable for its purposes and delivers written notice to the other Party prior to expiration of the Due Diligence Period (as the same may be extended) that it has elected to terminate this

Agreement, this Agreement shall automatically terminate, be null and void and neither Party shall have any rights or obligations under this Agreement except such rights and obligations as are expressly stated to survive an early termination of this Agreement.

ii. In the event neither party elects to terminate in accordance with Section 8(B)(i) prior to expiration of the Due Diligence Period, the Parties shall execute and deliver a letter or similar agreement (the Mayor being specifically authorized hereby in such regard)(the “*Satisfactory Due Diligence Letter*”) acknowledging and agreeing that:

A. the Plat is in final form and that the parties shall diligently pursue having the same recorded in the RMC Office for Charleston County on or before Closing; and

B. provided all contingencies are satisfied, the Parties shall close in accordance with this Transfer Agreement.

(C) City’s Acquisition of the Future Parcels. During the initial ninety (90) days of the Due Diligence Period:

i. City shall use commercially reasonable efforts to acquire the Future Parcels. Developer hereby acknowledges and agrees that, as of the Effective Date, the City does not own the Future Parcels. If the City has not acquired any Future Parcels on or before the expiration of the initial ninety (90) days of the Due Diligence Period, either Party may deliver written notice to the other Party prior to such date, that it has elected to terminate this Agreement, and this Agreement shall automatically terminate, be null and void and neither Party shall have any rights or obligations under this Agreement except such rights and obligations as are expressly stated to survive an early termination of this Agreement. If this Agreement is not so terminated, the Parties shall proceed to consummate the transaction as contemplated by this Agreement (excluding the Future Parcels).

9. CONTINGENCIES. The obligations of the Parties hereunder as to the City Parcels shall be subject to the fulfillment on or before the Closing, of each of the following conditions:

- (A) The representations and warranties of the Developer contained in this Transfer Agreement and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the date of the closing of the City Parcels.
- (B) Approval by the City’s Department of Public Service and the City Project Manager (as defined in the Development Agreement), and recordation in the RMC Office for Charleston County, of the Plat depicting the City Parcels.
- (C) Satisfaction of each of the conditions precedent to Closing as set forth in the Redevelopment Contingencies Addendum attached to this Transfer Agreement as Exhibit F and made a part hereof.

- (D) The South Carolina Department of Transportation (“**SCDOT**”) releasing the property to be conveyed pursuant to this Agreement, from the Restrictive Covenants reserved on behalf of the SCDOT in the various deeds conveying said property to the City, all in a form and manner acceptable to the City.
- (E) Execution and delivery by both parties of the Security Instrument (as that term is defined in the Development Agreement), in final form.

If the above contingencies are not satisfied by the prescribed time for Closing, then either the Developer or the City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement. Furthermore, if the above contingencies are not satisfied and Developer and City determine to proceed to close on the City Parcels, then each that has yet to be met or fulfilled under this Transfer Agreement shall survive the closing of the City Parcels.

10. PRORATIONS. All ad valorem taxes due with respect to the City Parcels for the calendar year of the closing shall be prorated between the Developer and the City as of the date of Closing. If the actual amount of such taxes is not known as of such date, the proration at the closing shall be on an equitable basis and shall be based on the most current and accurate billing information available. All prorations at closing shall be final.

11. AGENTS/ BROKERS. The City and the Developer hereby acknowledge, confirm and agree that no real estate agent or broker is involved in this transaction and, further, that no commissions are or shall be due and/ or payable to any real estate agent or broker as a result of this Transfer Agreement and the closing(s) contemplated hereby.

12. RISK OF LOSS OR DAMAGE. In case the City Parcels, or any improvement thereon, is destroyed wholly or partially by fire or other casualty prior to the Closing and delivery of the Deed, then the City or the Developer shall have the option of terminating this Transfer Agreement. In the event either party elects to terminate this Transfer Agreement, then the terminating party must give the non-terminating party written notice of such termination. In the event that none of the parties elects to terminate this Transfer Agreement as a result of such damage or destruction, then the City shall be entitled to retain and keep any insurance proceeds payable on account of the damage or destruction unless the parties otherwise agree in writing.

13. DEFAULT AND REMEDY. In the event of a breach of this Transfer Agreement, the non-breaching Party shall have all rights and remedies afforded under South Carolina law, including, without limitation, the right of specific performance, and the breaching Party shall be liable to reimburse the non-breaching Party for reasonable attorney’s fees and all expenses incurred in enforcing any provisions hereof.

14. NOTICES. Any notice, demand, or communication called for hereunder shall be in writing, shall be signed by the party giving same, and shall be given, served, or delivered either in person, or by first-class, certified mail, return receipt requested, postage prepaid, or by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid, and if to the Developer, addressed to the Developer at the Developer’s mailing address set forth below in

this Section, and if to the City, addressed to the City's mailing address set forth in this Section, or to such other address as either party may designate by written notice to the other. Any and all such notices, demands or other communications addressed to the Developer shall be deemed to be given to and received by the Developer on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid. Any and all such notices, demands or other communications addressed to the City shall be deemed to be given to and received by the City on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid, to the City's Clerk of Council, to the Director of the City of Charleston's Department of Housing and Community Development, and to Corporation Counsel for the City, whichever date is later. Such notices, demands or other communications shall be addressed as follows:

If to the Developer:

Housing Authority of the City of Charleston
550 Meeting Street
Charleston, South Carolina 29403
Attn: Donald J. Cameron, President/ Chief Executive Officer

Copy to: Oberman and Oberman, Attorneys
60 Markfield Drive, Suite 2
Charleston, South Carolina 29407

If to the City:

The City of Charleston
Attention: Clerk of Council
City Hall
80 Broad Street
Charleston, South Carolina 29401

Copy to: The City of Charleston
Department of Housing and Community Development
Attention: Geona Shaw Johnson
P.O. Box 304-29402
Charleston, South Carolina 29402

City of Charleston
Attention: Corporation Counsel
Legal Department
50 Broad Street
Charleston, South Carolina 29401

15. MISCELLANEOUS.

(A) Successors. This Transfer Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(B) Governing Law. This Transfer Agreement is being made in South Carolina and shall be construed and enforced in accordance with the laws of South Carolina.

(C) Survival. This Transfer Agreement and the provisions hereof shall survive the Closing of the City Parcels and shall not be merged by the City's execution and delivery to the Developer of the Deed or the recording thereof.

(D) Severability. Wherever possible, each provision of the Transfer Agreement shall be interpreted in such manner as to be effective and valid under applicable law, and such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Transfer Agreement.

(E) Waiver of Breach. The failure or delay of any party to insist upon compliance with any provision hereof shall not operate as and is not to be construed to be a waiver or amendment of the provision or of the right of the aggrieved party to insist upon compliance with such provision or to take remedial steps to recover damages or other relief for noncompliance. Any express waiver of a breach of any provision of this Transfer Agreement shall not operate and is not to be construed as a waiver of any other or subsequent breach, irrespective of whether occurring under similar or dissimilar circumstances.

(F) Entire Agreement. This Transfer Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof shall be changed orally, and no change or attempted waiver of any provision hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(G) Counterparts. This Transfer Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(H) Days; Dates. Unless otherwise specified herein, all references to day or days in this Transfer Agreement shall mean a calendar day or calendar days. If any date set forth in this Transfer Agreement or computed pursuant to this Transfer Agreement falls on a Saturday, Sunday, or national or South Carolina holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

(I) INTENTIONALLY OMITTED

(J) **TIME IS OF THE ESSENCE.** TIME IS OF THE ESSENCE AS TO ALL TERMS AND CONDITIONS OF THIS TRANSFER AGREEMENT.

(K) ***THIS IS A LEGALLY BINDING AGREEMENT. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT HAYNSWORTH SINKLER BOYD, P.A. IS SERVING AS THE CITY'S ATTORNEY IN THIS TRANSACTION AND DOES NOT REPRESENT THE DEVELOPER. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER HAS BEEN ADVISED BY THE CITY AND THE CITY'S ATTORNEYS TO SEEK ASSISTANCE FROM INDEPENDENT LEGAL COUNSEL PRIOR TO THE DEVELOPER'S EXECUTION OF THIS AGREEMENT.***

(L) **Effect of this Amended and Restated Transfer and Development Agreement.** For the avoidance of doubt, this Amended and Restated Transfer and Development Agreement replaces and supersedes in full the Original T&D Agreement.

(M) **Recitals.** The recitals are incorporated herein by reference and shall be deemed to be a part of this Transfer Agreement.

*****Remainder of Page Intentionally Left Blank*****
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the Effective Date.

WITNESSES:

Witness 1

Witness 2

CITY:

CITY OF CHARLESTON

By: _____
John J. Tecklenburg
Its: Mayor

DEVELOPER:

**HOUSING AUTHORITY OF THE CITY OF
CHARLESTON**

Witness 1

Witness 2

By: _____
Donald J. Cameron
Its: Chief Executive Officer

**EXHIBIT A
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

[see Plat attached.]

**EXHIBIT B
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Form of Affordable Rental Housing Restrictive Covenant Agreement

[see attached.]

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF CHARLESTON)

**AFFORDABLE RENTAL HOUSING
RESTRICTIVE COVENANT AGREEMENT**

THIS AFFORDABLE RENTAL HOUSING RESTRICTIVE COVENANT AGREEMENT (this "*Covenant Agreement*") is made and entered into as the ____ day of _____, 2015 (the "*Effective Date*") by and between CITY OF CHARLESTON (the "*City*"), and HOUSING AUTHORITY OF THE CITY OF CHARLESTON (the "*Developer*").

WITNESSETH:

WHEREAS, the City has identified an interest in helping to maintain long-term affordable housing for the benefit of its very low, low and moderate income residents;

WHEREAS, the Developer provides rental housing to persons of very low, low and moderate incomes in the City of Charleston;

WHEREAS, pursuant to the terms and conditions of that certain Transfer and Development Agreement dated August 18, 2015 (the "*Transfer Agreement*"), by deed recorded immediately subsequent hereto (the "*Deed*"), the City will sell and convey to the Developer, the real property and improvements thereon more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "*Property*");

WHEREAS, the Property will consist of a total of approximately sixty (60) housing units, approximately fifty-five (55) of which will be rental units and approximately five (5) of which will be owner-occupied;

WHEREAS, the aforementioned five (5) owner-occupied units will be subject to those restrictions contained in that certain Declaration of Transfer Restrictions entered into by and between the City and Developer and recorded in the RMC Office for Charleston County contemporaneously herewith;

WHEREAS, in accordance with, and subject to the terms of the Transfer Agreement and the restrictions regarding the future use of the Property contained herein, the rental units are to be developed and constructed on the Property and made affordable to tenants (with the use of funds from the City's Parcel B Fund Program); and

WHEREAS, in connection with the foregoing, the parties hereto desire to evidence said restrictions by recording this Covenant Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the conveyance of the Property from City to the Developer, and other good and valuable consideration, the Developer agrees to accept title subject to terms and conditions set forth in this Covenant Agreement.

1. **Binding Effect: Covenant Agreement to Run with the Land.** The covenants, terms, conditions and restrictions of this Covenant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

2. **Affordability Restrictions.** The Developer shall construct or cause to be constructed on the Property approximately fifty-five (55) housing units (each, a “Unit,” together with the Property and other improvements thereon and appurtenances thereto, the “Project”), which the Developer covenants and agrees shall be made affordable to tenants in the following manner:

<u>Category of Unit</u>	<u>Number/ Type of Units</u>	<u>Affordability Parameters</u>
Rental unit	25/ 1 bedroom	Targeted to elderly households earnings no more than 30% to 50% of the Area Median Income
Rental Unit	5/ 2 bedrooms	Very Low Income – Targeted to households earning not more than 30% to 50% of the Area Median Income
Rental Unit	5/3 bedrooms	Very Low Income – Targeted to families earning no more than 30% to 50% of the Area Median Income
Rental unit	20/ 2 bedrooms	Workforce Housing – Targeted to households earnings not more than 150% of the Area Median Income

Developer covenants and agrees that only “affordable rents” as determined by HUD shall be charged for the rental of the units in the Property. Developer must annually verify the tenant’s income and also sign a recertification that the incomes have been verified.

As used herein, the term “*Area Median Income*” shall mean and have reference to the median family income for the Charleston-North Charleston Metropolitan Statistical Area as established and published by the United States Department of Housing and Urban Development.

3. **Covenant Against Discrimination.** Developer shall not discriminate against or deny occupancy of any tenant or prospective tenant by reason of their receipt of, or eligibility for, housing assistance, under any Federal, State, or local housing assistance program; and not discriminate against or deny occupancy to any tenant or prospective tenant by reason that the tenant has a minor child or children who will be residing with them, unless the Property be one reserved for elderly tenants or special needs tenants as approved by the City or HUD.

Additionally, Developer shall be responsible for renting the units in the Property without regard to race, color, religion, sex, sexual orientation, national origin, age or handicap of the tenant.

4. Subordination. This Covenant Agreement shall not be subordinate or subject to the lien of any mortgage (or other lien, matter or encumbrance) recorded in the RMC Office for Charleston County unless and until the City executes and records a written subordination to the same, which the City may elect to do or not to do in its sole and absolute discretion. For avoidance of doubt, the interest of any mortgagee, lien holder or successor in title thereto shall be subject and subordinate to this Covenant Agreement.

5. Remedies for Breach. Upon breach of any of the covenants contained herein by the Developer, or any successor in interest or other owner of the Property, the City shall have all remedies provided at law or equity including but not limited to the bringing of an action for damages, specific performance, forfeiture, recouping of any funds from a sale in violation of this Covenant Agreement, diverting of rent proceeds from non-compliant rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises. In addition, the City shall be entitled to recover any reasonable costs and attorneys' fees incurred by the City in enforcing this Covenant Agreement and/or pursuing any remedy for a breach hereof.

6. Severability. Whenever possible, each provision of this Covenant Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Covenant Agreement shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Covenant Agreement are declared to be severable.

7. Notices. Any written notice, required by this Covenant Agreement shall be in writing, and shall be delivered either (1) in person, or (2) by first-class, certified mail, return receipt requested, postage prepaid, or (3) by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid. If the notice is to the city, it shall be addressed to the Owner at the street mailing address for the Property. If the notice is to the City, it shall be addressed to the City at the three addresses set forth below, or as corrected in the last recorded document. In addition, either party may designate another address by notice to the other. Any notice shall be deemed given to and received by the other party on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as described above, and one (1) day after it was placed with the overnight courier as described above. Notice to the City shall be complete only after City Hall, the Housing Director (or the equivalent successor) and Corporation Counsel have each received delivery of the notice:

If to the City:

The City of Charleston
Attention: Clerk of Council
City Hall/ 80 Broad Street

Charleston, South Carolina 29401

Copy to: The City of Charleston
 Attention: Director
 Department of Housing and Community Development
 P.O. Box 304-29402
 Charleston, South Carolina 29402

 City of Charleston
 Attention: Corporation Counsel
 Legal Department
 50 Broad Street
 Charleston, South Carolina 29401

If to the Developer:

Housing Authority of the City of Charleston
Attention: Donald J. Cameron, Chief Executive Officer
550 Meeting Street
Charleston, South Carolina 29403

Copy to: Oberman and Oberman, Attorneys
 104 Church Street
 Charleston, South Carolina 29401

8. Miscellaneous.

(a) This Covenant Agreement may not be modified or amended nor shall any of its provisions be waived, whether through lack of enforcement or otherwise, except by a written instrument signed by both parties. The parties hereto agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Covenant Agreement.

(b) All parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.

(c) This Covenant Agreement shall be construed and enforced according to the laws of the State of South Carolina.

*****Remainder of Page Intentionally Left Blank*****
[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

WITNESSES:

CITY OF CHARLESTON, SOUTH CAROLINA

By: _____
Joseph P. Riley, Jr.
Its: Mayor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING was acknowledged before me this _____ day of _____, 2015 by the City of Charleston, by Joseph P. Riley, Jr., its Mayor.

Notary Public for the State of South Carolina
My Commission Expires: _____
(SEAL)

WITNESSES:

HOUSING AUTHORITY OF THE CITY OF
CHARLESTON

By: _____
Donald J. Cameron
Its: Chief Executive Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING was acknowledged before me this ____ day of _____,
2015 by the Housing Authority of the City of Charleston, by Donald J. Cameron, its Chief
Executive Officer.

Notary Public for the State of South Carolina
My Commission Expires: _____
(SEAL)

EXHIBIT C
Single Family Affordable Housing Restrictive Covenants

City of Charleston

1. Covenant and Purpose. The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the Restrictive Covenants). The Restrictive Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Developer, its heirs, successors and assigns, together with all successors in title to the Property, being collectively referred to herein as the Owner). Each Owner covenants and agrees, in the event the Property is sold, conveyed or otherwise disposed of, the Property shall be sold subject to these Restrictive Covenants and that the recording information for this deed shall be inserted in the deed of conveyance or other instrument disposing of the Property.

2. Definitions. As used in these covenants, conditions, and restrictions the following terms shall have the meaning set forth:

2.1. "Area Median Income" shall mean and have reference to the median family income, based upon applicable family size of a Qualified Purchaser (or of a Qualified Renter, if applicable), for the Charleston-North Charleston metropolitan statistical area as published by the United States Department of Housing and Urban Development. If the United States Department of Housing and Urban Development should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining Area Median Income.

2.2. "Base AMI" shall mean the Area Median Income for a family of four persons as of the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base AMI for this deed is \$_____.

2.3. "Consumer Price Index" shall mean and have reference to the Consumer Price Index for All Urban Consumers (CPI-U) for the South urban area, All Items, (Base Period: 1982-84 = 100), as published by the United States Department of Labor. If the United States Department of Labor should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining the Consumer Price Index.

2.4. "Base CPI" shall mean the most recent published Consumer Price Index [preceding] [as of] the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base CPI for this deed is _____.

2.5. "AMI Increase" shall mean the Area Median Income for a family of four persons at the date of calculation divided by the Base AMI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the Area Median Income for a family of four persons was \$49,200 in July, 2002 (the "Base AMI" for purposes of this illustration only) and if the Area Median Income for a family of four persons was \$55,900 in September, 2005 when an Owner proposed to sell the Property, the AMI Increase would be \$55,900 divided by \$49,200 or 1.136 (rounded) (i.e. 113.6%).

2.6. "CPI Increase" shall mean the most recent published Consumer Price Index [preceding] [as of] the date of calculation divided by the Base CPI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the most recent published Consumer Price Index [preceding] [as of] July, 2002 was 173.5 (the "Base CPI" for purposes of this illustration only) and if the most recent published Consumer Price Index [preceding] [as of] September, 2005 was 189.4 when an Owner proposed to sell the Property, the CPI Increase would be 189.4 divided by 173.6 or 1.091 (rounded) (i.e. 109.1%).

2.7. "Base Purchase Price" shall mean the gross purchase price paid to the Developer by the first Qualified Purchaser of the Property. The Base Purchase Price for this deed is \$_____.

2.8. "City" shall mean and have reference to the City of Charleston, a municipal corporation, duly organized and existing under the laws of South Carolina.

2.9. "Developer" shall mean and have reference to _____.

2.9. "Qualified Purchaser" shall mean and have reference to a proposed purchaser of the Property whose household income is between fifty percent (50%) and one hundred and twenty percent (120%) of Area Median Income as of the anticipated date of purchase of the Property by the Qualified Purchaser and who is certified in writing by the City as having the requisite income.

2.10. "Owner" shall mean and have reference to, at any particular point in time, the owner in fee simple of the Property, and the owner's heirs, successors and assigns. The Owner shall initially be the Developer, and shall subsequently be the Qualified Purchaser who purchases the Property from the Developer. Owner shall include any party that acquires fee simple ownership of the property by virtue of foreclosure of mortgage or deed of trust conveying the Property as security for an obligation or any transfer in lieu of such foreclosure.

2.11. "Property" shall mean and have reference to that certain tract or parcel of land conveyed by this deed, together with all improvements, fixtures and equipment located thereon.

2.12. "Resale Price" shall mean and have reference to (i) an amount determined as the product of the Base Purchase Price multiplied by the greater of the AMI Increase or the CPI Increase, or (ii) such higher amount as may be determined in accordance with Section 5 herein. By way of example and solely for purposes of illustration, if the Base Purchase Price were \$140,000 (solely for purposes of this illustration only) when the Developer transferred the Property to the first Qualified Purchaser in July, 2002 and the AMI Increase was 1.136 at the time of a proposed sale in September, 2005 and the CPI Increase was 1.091 at the time of a proposed sale in September, 2005 the Resale Price would be \$140,000 times 1.136 (i.e. 113.6%) or \$159,040.

2.13. "City Subsidy" shall mean \$ _____

2.14. "City Subsidy Percentage" shall mean the City Subsidy divided by the Base Purchase Price. By way of example only and solely for purposes of illustration, if the Base Purchase Price were \$140,000 and the City Subsidy were \$21,000, the City Subsidy Percentage would be \$21,000 divided by \$140,000 or 15%.

2.15. "Lien Limitation Percentage" shall mean 100% minus the City Subsidy Percentage. By way of example only and solely for purposes of illustration, if the City Subsidy Percentage were 15%, the Lien Limitation Percentage would be 85%.

2.16. "Lien Limit" shall mean the amount that equal the Lien Limitation Percentage times the Resale Price as calculated by the City immediately prior to the execution of the mortgage. By way of example and solely for the purposes of illustration, if the Owner wanted to mortgage the Property in September, 2005 and the Resale Price in September, 2005 were \$159,040, the City Subsidy Percentage were 15%, the Lien Limitation Percentage were 85% , then the Lien Limit would be \$159,040 times 85% or \$135,184.

2.17. "Adjusted City Subsidy" shall mean the City Subsidy Percentage times the Resale Price as calculated at the time of determining the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price in September, 2005 were \$159,040 and the City Subsidy Percentage were 15%, the Adjusted City Subsidy in September, 2005 would be \$159,040 times 15% or \$23,910.

2.18. "Non-City Share of the Resale Price" shall mean the Resale Price as calculated at the time of determining the Non-City Share of Resale Price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910 in September, 2005, the Non-City Share of Resale Price would be \$159,040 minus \$23,910 or \$135,130. In the event the Property is sold to the City for the Default Option Price, the Non-City Share of the Resale Price shall mean the Default Option Price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910 in September, 2005 and the Default Option Price applied, the Non-City Share of the Resale Price would be \$159,040 times 80% or \$127,232 minus \$23,910 or \$103,322.

2.18. "Default Option Price" shall mean 80% of the Resale Price as calculated at the time of the City's written notice of default under Section 13.1. By way of example and solely for the purposes of illustration, if the City gave notice of default in September, 2005 and the Resale Price were \$159,040 at that time, the Default Option Price would be \$159,040 times 80% or \$127,232.

2.19. "Option Term" shall mean 90 years from the date of the deed from the Developer to the first Qualified Purchaser. All provisions relating to the City's Right of First Refusal and the City's right to purchase the Property for the Default Option Price shall automatically terminate upon the expiration of the Option Term. If the South Carolina Uniform Statutory Rule Against Perpetuities (Section 27-6-10 et seq., Code of Laws Of South Carolina, 1976, as amended) is amended, the Option Term shall automatically be modified to the longest period authorized by South Carolina law.

2.20. "Qualified Renter" shall mean and have reference to a proposed renter of the Property whose household income does not exceed eighty percent (80%) of Area Median Income and who is certified by the City as having the requisite income for the applicable household size.

2.21. "Qualified Rent" shall mean the monthly rent approved by the City as affordable rent in accordance with applicable federal guidelines.

2.22. "Qualified Lease" means a written lease approved by the City from the Owner to a Qualified Renter for a Qualified Rent. The lease must be for a term approved by the City and must include periodic recertification by the City of the income of the tenant, if the lease is for more than 12 months to insure that the tenant continues to be a Qualified Renter.

2.23. "City Transfer Certificate" shall mean the written certification to be provided by the City in connection with each transfer of the Property and each granting of a mortgage on the Property. In the event of a transfer, the City Transfer Certificate shall be in a recordable form and shall state the maximum Resale Price as of the date of the specific transfer, the names of the approved Qualified Purchaser(s), the amount of the Adjusted City Subsidy, the amount of the Non-City Share of the Resale Price, each as of the date of the particular transfer and the City's waiver of its right of first refusal. In the event of a mortgage, the City Transfer Certificate shall be in a recordable form and shall state the amount of the Resale Price as of the date of the mortgage, the Lien Limit Percentage, the Lien Limit as of the date of the mortgage, the City Subsidy Percentage, the Adjusted City Subsidy as of the date of the mortgage, together with the City's approval of the new mortgage. In the event that the City has given a one time waiver of any requirements in accordance with the procedures set forth in these Restrictive Covenants, the City Transfer Certificate shall set forth the existence and terms of such waiver. If there is a change in any address listed in Section 16 for notice to the City, the City Transfer Certificate shall provide the new address. An illustration of a City Transfer Certificate based on theoretical facts is attached as an exhibit to these Restrictive Covenants

2.24. "Taxes" means ad valorem taxes on the Property, together with all fees, assessments, penalties and accrued interest charged against the Property or owed by the Owner by reason of its ownership of the Property.

2.25. "City Maintenance Lien" shall have the meaning ascribed in Section 9.

2.26. "City Tax Lien" shall have the meaning ascribed in Section 10.

2.27. "City Lease Lien" shall have the meaning ascribed in Section 13.2.

3. City Subsidy. The City has made an investment in the Property equal to the City Subsidy and the City has agreed that each successive Owner of the Property shall have the benefit of the Adjusted City Subsidy for so long as these Restrictive Covenants remain in effect.

3.1. City's Equitable Interest in the Property. Each Owner covenants and agrees that the City has an equitable interest in the Property equal to the Adjusted City Subsidy. Each Owner covenants and agrees that the portion of any Resale Price as equals the Adjusted City Subsidy Amount belongs to the City and that the Owner's interest in the Resale Price is limited to the Non-City Share of the Resale Price. If these Restrictive Covenants are terminated for any reason, the City shall be entitled to receive payment in full of the Adjusted City Subsidy within thirty (30) days of such termination.

3.2. Transfer and Mortgage Procedures. All transfers of, and all mortgages on, the Property shall be made in accordance with these Restrictive Covenants.

(A) In the event that an Owner wishes to transfer or mortgage the Property, the Owner shall provide written notice of such proposed transfer or mortgage to the City. Such written notice shall request assistance from the City to identify potential Qualified Purchasers and shall request the City to calculate the maximum Resale Price, if a transfer and shall request the City to calculate the current Lien Limit, if a mortgage. (*See the illustration contained in the definition of Resale Price contained in Section 2.10*) The Owner may transfer the Property for less than the Resale Price but a lower purchase price will not change the amount of the Adjusted City Subsidy. The Owner agrees that it will not mortgage the Property unless there is a monthly escrow for insurance and taxes that is reasonably acceptable to the City.

(B) Each Owner covenants and agrees that no transfer of the Property shall take place and no mortgage of the Property shall be granted unless it is in conformance with these Restrictive Covenants and unless the City has delivered a City Transfer Certificate. Each Owner agrees to record the City Transfer Certificate with the transferring deed and with any mortgage.

(C) The aggregate proceeds that the Owner and its mortgagees may receive, and the maximum amount that a Qualified Purchaser may pay, upon the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and

(ii) the purchase price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910, the Qualifying Purchaser would pay \$135,130 and the maximum amount that would be available to pay closing costs, to satisfy any mortgages or other outstanding liens and to pay the selling Owner would be the Non-City Share of the Resale Price or \$135,130.

3.3. City Subsidy Lien. The City shall have a continuing lien against the Property in the amount of the Adjusted City Subsidy which lien shall survive the foreclosure of any mortgage or other lien on the Property and shall survive any other transfers of the Property.

4. Resale Only to Qualified Purchasers. Each Owner covenants and agrees that the Property shall be sold, transferred and conveyed only to such individual, party, or entity as described in this paragraph.

4.1. Qualified Purchasers. The Property shall be conveyed only to Qualified Purchasers who are certified by the City in accordance with subparagraph 4.4 (City Certification) or to such persons, parties or entities who are deemed Qualified Purchasers in accordance with subparagraphs 4.2 (Inheritance), 4.3 (Foreclosure), or 4.5 (City Waiver) of this paragraph or in accordance with Paragraph 6 (City Right of First Refusal).

4.2. Inheritance. A transfer that occurs by virtue of the death of an Owner, and testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Purchaser.

4.3. Foreclosure. A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Property or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Purchaser or a transfer by an institutional mortgagee that acquires the Property in foreclosure or by a deed in lieu of foreclosure.

4.4. City Certification. An Owner shall submit, or cause to be submitted, to the City for certification as a Qualified Purchaser, any proposed purchaser of the Property. An Owner shall transfer the Property only to a purchaser who has been certified by the City as a Qualified Purchaser in a City Transfer Certificate. The City shall not decline, refuse or fail to certify as a Qualified Purchaser any potential purchaser of the Property except on the sole ground that the City is unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Purchaser.

4.5. City Waiver. The City shall have the right to waive, in its sole discretion, the requirement for a specific purchaser that the purchaser be a Qualified Purchaser. A waiver shall apply to only one transfer and shall not apply to subsequent transfers. Upon receipt of a City Transfer Certificate that contains the written waiver from the City, the specific purchaser shall be deemed to be a Qualified Purchaser.

5. Resale Price. No Owner shall transfer the Property for an amount in excess of the Resale Price. The gross proceeds payable to the Owner on the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and (ii) the purchase price minus the Adjusted City Subsidy.

5.1. Adjustment to Resale Price. The Resale Price may be adjusted upward by the City to a higher amount if the City determines in its sole discretion that the nature and circumstances of the Owner, and the nature and condition of the Property, warrant such a higher amount and that such higher amount will not preclude the ability to certify a potential purchaser as a Qualified Purchaser. The determination of any such upward adjustment in the Resale Price shall be in the sole discretion of the City which may elect to refuse to increase the Resale Price for any reason.

5.2. Documentation of Adjustment. No increase in the Resale Price shall be permitted or authorized unless the basis for the increase, and the amount of the Resale Price as adjusted, is set forth in the City Transfer Certificate. Such an increase to the Resale Price shall apply only for a period of 12 months from the date of the City Transfer Certificate and shall not apply to subsequent transfers.

6. Right of First Refusal. In the event that an Owner shall receive an offer to purchase the Property from a Qualified Purchaser or a person who is deemed to be a Qualified Purchaser pursuant to Section 4 for an amount equal to or less than the Resale Price which is acceptable to the Owner (the "Offer"), the City shall have a right to purchase the Property from the Owner for the price set forth in the Offer (the "Right of First Refusal"). Upon the receipt of an Offer, the Owner shall promptly forward a copy of the Offer to the City. In the event that the City elects to exercise the Right of First Refusal, the City shall give written notice thereof to the Owner within sixty (60) days of the City's receipt of the Offer and the closing of such purchase shall occur no later than ninety (90) days following the City's receipt of the Offer. In such circumstances, the sale and transfer of the Property to the City shall be subject to all other provisions of these Restrictive Covenants, and the City shall be deemed to be a Qualified Purchaser. In the event that the City does not exercise its Right of First Refusal within the time periods set forth above, the City Transfer Certificate shall include a waiver of the City's Right of First Refusal. This Right of First Refusal shall be a continuing right that applies to each proposed transfer of the Property. This Right of First Refusal shall automatically terminate upon the expiration of the Option Term.

7. Single Family Use and Leases. The Owner covenants and agrees that the Property shall be used and occupied solely as an Owner occupied, single family residential dwelling. The Owner shall not lease, nor permit to be leased, the Property, except as expressly authorized by this Section 7.

7.1. City Inspection. The City shall have the right to inspect the Property from time to time to insure compliance with these Restrictive Covenants. The Owner shall furnish the City upon request with copies of paid Tax receipts, insurance policies, termite bonds and other documents required by these Restrictive Covenants.

7.2. Obligation to Sell. If an Owner ceases to occupy the Property, the Owner agrees to give prompt written notice to the City that the Property is no longer Owner occupied and the Owner agrees to sell the Property to a Qualified Purchaser for the Resale Price. The Owner agrees to actively list and market the Property and agrees that the City and its agents shall be entitled to show the Property to prospective purchasers at reasonable times of the day upon 24 hours notice.

7.3. Obligation to Rent to Qualified Renter. If an Owner ceases to occupy the Property, the Property may be occupied only by a Qualified Renter pursuant to a Qualified Lease for a Qualified Rent during the period of time that the Property is being marketed for resale to a Qualified Purchaser.

8. Lien Limit. The equity in the Property represented by the Adjusted City Subsidy shall not be mortgaged or otherwise encumbered by the Owner. The Owner agrees that the aggregate liens on the Property shall not exceed the Lien Limit. The Lien Limit includes any City Tax Lien, City Lease Lien and City Maintenance Lien but does not include the City's lien for the Adjusted City Subsidy. The Owner agrees that City shall have the right to review any proposed mortgage or other encumbrance on the Property and that no lien shall be placed on the Property unless the City delivers a City Transfer Certificate approving such lien. The City may in the exercise of its sole discretion authorize a higher level of encumbrances on the Property in the City Transfer Certificate. Any lien amount waiver by the City shall apply only to the current level of indebtedness of the existing encumbrances and shall not apply to any new obligations, judgments or debts.

9. Maintenance and Insurance Obligations. The exterior appearance of the Property shall be maintained in an attractive and orderly condition and shall be kept free from trash, salvage, junk cars, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall maintain flood insurance and "All Risk" insurance on the Property for the lesser of the replacement value and its insurable value. All insurance policies shall name the City as an additional insured. The Owner shall maintain a current termite bond on the Property. In the event that the Owner shall breach the obligations contained in this Section, the City shall have the right (but not the obligation) to enter the property to make repairs, to remove material and to otherwise correct the Owner's breaches and the City shall have the right (but not the obligation) to purchase such insurance and terminate bonds as are required by these Restrictive Covenants. The Owner shall promptly reimburse the City upon written demand for the costs incurred by the City to correct the Owner's breaches under this Section and the City shall have a continuing lien against the Property in the amount of such costs until paid in full which is separate and distinct from the City's lien for the Adjusted City Subsidy ("City Maintenance Lien").

10. Payment of Taxes. The Owner shall promptly pay each year the Taxes on the Property and shall deliver a copy of the paid receipt for such Taxes to the City within 30 days of payment. In order to protect the City's equitable interest in the Property, the City shall have the right (but

not the obligation) to pay any delinquent Taxes on the Property and in such event, the Owner shall promptly reimburse the City for such Taxes upon written demand of the City. The City shall have a continuing lien against the Property for the amount of such Taxes paid by the City which is separate and distinct from the City's lien for the Adjusted City Subsidy ("City Tax Lien").

11. No Subdivision. Without the prior express written consent of the City, the Property shall not be subdivided, nor converted to any form of horizontal property regime, nor any portion less than all the Property be conveyed, nor shall any form of interval ownership of or time sharing of the Property be permitted.

12. Prevention of Heirs Property. The Owner shall maintain a current last Will and Testament and will use reasonable efforts to prevent the Property from transferring upon the Owner's death pursuant to the laws of intestacy.

13. Enforcement of Covenants. The Developer and each Owner hereby acknowledge and agree that the covenants, conditions and restrictions set forth herein are imposed for the benefit of the City of Charleston, and that the City has interests in real property and social, cultural and economic interests that benefit from the imposition of these covenants and restrictions. The benefits of these covenants, conditions and restrictions run with the Property, and bind and burden the Property. These Restrictive Covenants shall be enforceable by the City. The Developer and each Owner further acknowledge and agree that a breach of the covenants, conditions, and restrictions set forth herein shall potentially result in a broad range of economic, social, cultural and residential damages to a large number of parties, that such damages are difficult if not impossible to determine, and that the City shall be entitled to seek such remedies as may be available at law or in equity including but not limited to injunctive relief and specific performance. The City shall be entitled to recover reasonable attorney fees and costs from the Owner in the event of a breach by the Owner of these Restrictive Covenants.

13.1. Default Option Price. During the Option Term and as an additional remedy in the event of an Owner's breach of these Restrictive Covenants, the City shall have the right to purchase the Property for the Default Option Price from the then current Owner:

(A) if a selling Owner sells the Property to a purchaser who is not a Qualified Purchaser or who is not deemed to be a Qualified Purchaser under the provisions of these Restrictive Covenants; or

(B) if a selling Owner sells the Property for a purchase price in excess the Resale Price and the City has not agreed in writing to an increased purchase price pursuant to Section 5.

If the City purchases the Property for the Default Option Price, the then current Owner will be required to sell the Property to the City for a purchase price that is less than the price such Owner paid for the Property. The City shall have no obligation to the current Owner or its mortgagee to provide legal assistance in seeking redress against an Owner whose breach resulted in the City's

exercising its right to purchase the Property at the Default Option Price. Purchasers and mortgagees can protect themselves from the losses resulting from the City's purchase at the Default Option Price by requiring a City Transfer Certificate as a condition of a sale or of a mortgage.

13.2. Unauthorized Leasing. In the event that the Owner leases the Property pursuant to a lease that is not a Qualified Lease, or leases the Property to someone who is not a Qualified Renter, or receives rent in excess of the Qualified Rent, the City shall have the remedies provided by this Section, in addition to any other remedies provided by law or equity. In the event that the Owner receives rent from a person who is not a Qualified Renter, or receives rent that is not Qualified Rent or receives rent pursuant to any lease other than a Qualified Lease, the Owner shall promptly remit all such unauthorized rent to the City upon written demand. The City shall have a lien against the Property in the amount of such unauthorized rent ("City Lease Lien"). In the event that the Owner leases the Property to a person who is not a Qualified Renter, the Owner shall cause such person to vacate the Property within ten (10) days of written notice from the City.

13.3. City Liens. In addition to any other remedies provided by law or equity for the breach of these Restrictive Covenants, the City shall have the right to foreclose on a City Tax Lien, a City Lease Lien and a City Maintenance Lien in the event that the Owner fails to reimburse the City within sixty (60) days of written notice from the City. In such foreclosure action, the City shall be entitled to add to the amount of the liens, and to recover, its reasonable attorney fees and the costs of such a foreclosure action. All City Tax Liens, City Lease Liens and City Maintenance Liens shall be subordinate to any mortgage approved by the City in a City Transfer Certificate. If the Owner and the City mutually agree, the Owner and the City can elect to modify these Restrictive Covenants to add the amount of any outstanding City Tax Lien, City Lease Lien and/or City Maintenance Lien to the amount of the Adjusted City Subsidy; any such amendment must be in compliance with Section 14 (Duration and Amendment) and neither party has any obligation to consent to such an amendment.

14. Duration and Amendment. This Restrictive Covenants shall bind all persons claiming any interest in the Property and run with the land for a period of ninety (90) years from the date of recording, after which time these Restrictive Covenants shall be automatically extended for successive periods of ten (10) years unless amended as provided in this Section. These Restrictive Covenants may be amended only by a writing executed by both the then current Owner and the City which is filed in the land records office of the County where the Property is located.

15. Severability. Whenever possible, each provision of these Restrictive Covenants shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Restrictive Covenants shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of these Restrictive Covenants are declared to be severable. Notwithstanding anything contained herein to the

contrary, if any of provision of these Restrictive Covenants shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until ninety (90) years from the date of first recordation.

16. Notices. Any written notice, required by these Restrictive Covenants shall be in writing, and shall be delivered either (i) in person, or (ii) by first-class, certified mail, return receipt requested, postage prepaid, or (iii) by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid. If the notice is to the Owner, it shall be addressed to the Owner at the street mailing address for the Property. If the notice is to the City, it shall be addressed to the City at the three addresses set forth below, or as corrected in the last recorded City Transfer Certificate. In addition, either party may designate another address by notice to the other. Any notice shall be deemed to be given to and received by the other party on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as described above, and one (1) day after it was placed with the overnight courier as described above. Notice to the City shall be complete only after City Hall, the Housing Director (or the equivalent successor) and Corporation Counsel have each received delivery of the notice:

The City of Charleston
Attention: Clerk of Council
City Hall
80 Broad Street
Charleston, SC 29401

Copy to: The City of Charleston
Department of Housing and Community Development
75 Calhoun Street, Division 616
Charleston, SC 29401-3506

City of Charleston
Attention: Corporation Counsel
Legal Department
80 Broad Street
Charleston, SC 29401

Example of City Transfer Certificate
(This is an illustration of a City Transfer Certificate based on theoretical facts and is provided solely for purposes of illustration)

Property	25 ABC Street Charleston SC TMS 123-00-00-456
Current Owners	Richard and Susan Jones
First Deed	Recorded in Book ___, Page ___ and dated July 5, 2002
Base Purchase Price	\$140,000
AMI Increase	113.6% from July 5, 2002 to September 15, 2005
CPI Increase	109.1% from July 5, 2002 to September 15, 2005
Resale Price	\$159,040 as of September 15, 2005
City Subsidy	\$21,000
City Subsidy Percentage	15%
Adjusted City Subsidy Amount	\$23,910 as of September 15, 2005
Non-City Share of Resale Price	\$135,130 as of September 14, 2005
Lien Limitation Percentage	85%
Lien Limit	\$135,184 as of September 15, 2005

STATE OF SOUTH CAROLINA)	
)	ACKNOWLEDGMENT
COUNTY OF CHARLESTON)	

I, the undersigned Notary Public, do hereby certify that _____, a Housing Development Officer for the City of Charleston Department o Housing and Community Development, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the ____ day of _____, 2005.

Notary Public For South Carolina
My Commission Expires

**EXHIBIT C
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Form of Declaration of Transfer Restrictions

[see attached.]

**EXHIBIT D
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Form of Development Agreement

[see attached.]

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter the "***Development Agreement***") is made and entered into as of the _____ day of _____, 2016 (the "***Effective Date***"), by and between the CITY OF CHARLESTON, a South Carolina municipal corporation (the "***City***"), and HOUSING AUTHORITY OF THE CITY OF CHARLESTON (the "***Developer***") (each, a "***Party***," and together, the "***Parties***").

WHEREAS, simultaneously with the execution and delivery hereof, City has conveyed, or shall convey to Developer, two (2) parcels of real property located in the City of Charleston in the vicinity of the southern intersection of Lee Street and Nassau Street, designated as Parcel A ("***Parcel A***") and Parcel J ("***Parcel J***," and together with Parcel A, the "***City Parcels***") on the plat attached hereto as Exhibit A (the "***Plat***"), all in accordance with the terms of that certain Amended and Restated Transfer and Development Agreement dated of even date herewith between the Parties (the "***Transfer Agreement***");

WHEREAS, in the event that the City has (i) obtained contracts to purchase additional parcels in the vicinity of the City Parcels (each, a "***Future Parcel***," and collectively, the "***Future Parcels***"), and (ii) assigned such contracts to Developer, each such Future Parcel shall be included in the definition of "City Parcels" for purposes of this Development Agreement;

WHEREAS, under the terms of the Transfer Agreement, the Parties agreed to enter into this Development Agreement to provide for the terms and conditions by which Developer shall redevelop the City Parcels so that the Developer may (i) sell a portion of the properties to buyers earning no more than 120% of the Area Median Income established and published by HUD as hereinafter defined, and (ii) lease a portion of the properties to renters earning no more than 150% of the Area Median Income, all as more specifically contemplated herein (the "***Redevelopment***");

WHEREAS, subject to, and as more particularly set forth in, this Agreement, the Parties intend that the costs to be incurred by the Developer in connection with the Redevelopment, shall be paid by the Developer; provided, however, that upon the satisfaction of the terms and conditions set forth herein, the City shall be responsible for providing \$2,000,000.00 to the Developer for the Redevelopment in accordance with the terms and conditions of this Development Agreement;

WHEREAS, the City and Developer now wish to enter into this Development Agreement for the purpose of more particularly setting forth the terms and conditions by which the Redevelopment shall be performed.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I – DEFINITIONS

Section 1.1 Defined Terms. In addition to the terms defined in the Recitals and elsewhere herein, the following terms shall have the meanings specified herein:

“Applicable Requirements” shall mean, collectively, all requirements contained in this Agreement, the Construction Documents, all City standards and requirements for public improvements, and all applicable and duly enacted federal, state, county and City laws, codes, ordinances, rules, regulations, approvals, and permits (all as may have been modified by any documents applicable to the Property, including without limitation the Development Agreement).

“Certificate of Occupancy” means a final certificate of occupancy executed and delivered by any and all necessary governmental authorities.

“City Project Manager” shall mean the individual appointed by the City who is responsible for coordinating the City’s rights and obligations under this Agreement and who is responsible for reviewing designs and plans, inspecting construction and determining satisfaction of project requirements and for coordinating all City responses to Developer’s applications for City consents and approvals contemplated hereby, for assisting Developer with the application and review process for City permits and for obtaining timely and unified City responses to Developer’s requests for approvals, permits and consents. Initially, the City has appointed Michael Kiefer, with a notice of address of 75 Calhoun Street, Suite 3200, Charleston, SC 29401, as the City Project Manager; but City reserves the right to change such designation at any time by letter of the Mayor.

“Construction Documents” shall mean, collectively, the Plans, and all construction budgets, engineering reports, Design Professional contracts, construction management agreements, supply contracts, construction contracts, project schedules, and other documentation pertaining to the design, equipping, and construction of the Redevelopment (but not including any construction financing documents with third party construction loan lenders, if any), each as may be amended from time to time in accordance herewith.

“Construction Funds” shall have the meaning set forth in Section 2.1 of this Agreement.

“Design Professional” means the design professional who Developer designates to the City in writing as such and certifies is a properly licensed architect and/ or engineer engaged by the Developer to design the plans for the Redevelopment.

“Disbursement Request” has the meaning set forth in Section 3.2 of this Agreement.

“Redevelopment Costs” means costs actually incurred by the Developer and approved by the City Project Manager in performing the Redevelopment.

“Plans” shall mean the final plans and specifications for the Redevelopment, including all drawings and design calculations, prepared by the Design Professional and attached hereto as Exhibit B.

“Redevelopment Schedule” has the meaning set forth in Section 2.4 of this Agreement.

“Substantial Completion” or ***“Substantially Complete”*** means the issuance of a Certificate of Occupancy and execution of a letter by the City Project manager granting final approval of the Redevelopment. Anything contained herein to the contrary notwithstanding, the granting of final approval shall not constitute final approval or acceptance of defective work, and shall not waive any rights or warranties available to City hereunder, at law or in equity.

ARTICLE II – CONSTRUCTION REQUIREMENTS

Section 2.1 Duty to Construct. The Developer shall perform or cause the performance of all of its obligations hereunder to construct the Redevelopment and shall conduct all operations with respect to the construction of the Redevelopment in a good, workmanlike, and commercially reasonable manner. The Developer shall prepare all necessary bid documents and bid the construction of the Redevelopment (the ***“Construction Bid”***). The Developer shall retain at all times adequate staff or consultants to administer and coordinate all work related to the design, engineering, acquisition, construction, and installation of the Redevelopment. Subject to the terms hereof, the City shall make available \$2,000,000.00 to Developer to defray a portion of the Redevelopment Costs (the ***“Construction Funds”***). Subject to delays due to *force majeure*, the Developer shall commence construction of the Redevelopment on or about December 31, 2017 and complete construction on or about December 31, 2019. It is anticipated that the Construction Funds shall be provided to Developer on or about the date that construction is commenced; provided, however, that the City shall have no obligation to provide the Construction Funds to Developer prior to January 31, 2018.

Section 2.2 Compliance with Applicable Requirements. The Developer shall construct the Redevelopment in accordance with all Applicable Requirements. The Developer shall obtain all necessary permits and approvals prior to commencing construction of the Redevelopment, and promptly thereafter shall commence and diligently pursue the completion of the Redevelopment in accordance with all Applicable Requirements.

Section 2.3 Plans. At any time prior to Substantial Completion, the Developer and/ or the Design Professional shall provide amendments to the Plans so that the Plans comply with Applicable Requirements if it is reasonably determined by the City that any such Plans do not comply and the City Project Manager determines such amendments would not materially impact the character or utility of the Redevelopment. Upon request, Developer shall promptly provide to the City copies of the Plans as required by the City’s building codes and requirements and one reproducible copy of the approved Plans, which shall become the property of the City, at no cost to the City.

Section 2.4 Completion. The Developer shall Substantially Complete the Redevelopment, and shall complete each component thereof, within the applicable period of time as set forth in the Project Schedule attached hereto as Exhibit C (the “*Project Schedule*”).

Section 2.5 Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City. The City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of the Developer but shall be responsible to fund amounts to the Developer in accordance with this Agreement, unless otherwise directed in writing by the Developer to directly fund to Developer’s contractor.

Section 2.6 Redevelopment Budget; Schedule of Values. The initial cost budget estimate to complete the Redevelopment is set forth on Exhibit D attached hereto, together with the project breakdown for each applicable component. The initial budget estimates for the Redevelopment set forth on Exhibit D hereto may be amended from time to time to reflect increases, decreases, or reallocations. Attached hereto is an initial cost breakdown prepared by Developer allocating values to various portions of the Redevelopment by each trade and division of the work (the “*Schedule of Values*”). Upon request, the Schedule of Values shall be supported by any additional data to substantiate its accuracy as the City may reasonably require. The Schedule of Values with trade payment breakdown provides sufficient detail to identify sections of the Redevelopment by convenient or meaningful units.

Section 2.7 Indemnity. Except to the extent arising out of the negligence or failure of the City to meet any of its obligations hereunder, the Developer shall cause its General Contractor to indemnify the City, its Council members, staff, officers, employees, agents, successors and assigns (including, written limitations, the City Project Manager) and hold them harmless from and against any and all liabilities, losses, damages, claims, costs and expenses, interest, awards, judgments, liens and penalties (including, without limitation, reasonable attorneys’ fees and expenses) which they may incur, suffer to be required to pay or defend, settle or satisfy, to the extent arising out of or relating to the Redevelopment or the Developer’s breach of any provision of this Agreement (or any other agreement), including but not limited to all costs (including attorneys fees) relating to the City’s efforts to enforce the provisions of any payment or performance bonds provided by the Developer.

Section 2.8 Reserved.

Section 2.9 Warranty. Developer warrants to the City that (a) all materials and equipment furnished shall be of good quality and new (unused) unless otherwise permitted by this Agreement or unless the City approves of reasonable substitutes presented by the Developer in writing; and (b) that the work shall be of good quality, free from faults and defects and in conformance in all material respects with this Agreement, any amendments hereto, and the Construction Documents.

Developer shall require each of its general contractors with respect to the Redevelopment to provide a warranty substantially equivalent to the foregoing warranty for the benefit of the Developer and the City.

Section 2.10 Contractors. All contractors to perform work on the Redevelopment shall be selected by Developer.

Section 2.11 Notice of Project Commencement. Developer shall require its general contractors to file a Notice of Project Commencement in accordance with the provisions of South Carolina Code Ann. §29-5-23 prior to the commencement of the Redevelopment.

Section 2.12 Affordability Requirements. Developer shall provide approximately sixty (60) housing units (the “*Units*”), which shall be developed and constructed on the City Parcels and made affordable to end buyers and tenants in the following manner:

<u>Category of Unit</u>	<u>Number/ Type of Units</u>	<u>Affordability Parameters</u>
Rental unit	25/ 1 bedroom	Targeted to elderly households earnings no more than 30% to 50% of the Area Median Income
Rental Unit	5/ 2 bedrooms	Very Low Income – Targeted to households earning not more than 30% to 50% of the Area Median Income
Rental Unit	5/3 bedrooms	Very Low Income – Targeted to families earning no more than 30% to 50% of the Area Median Income
Rental unit	20/ 2 bedrooms	Workforce Housing – Targeted to households earnings not more than 150% of the Area Median Income
Owner-occupied unit	5/ 3-bedroom	Targeted to households earning not more than 120% of the Area Median Income

As used herein, the term “*Area Median Income*” shall mean and have reference to the median family income for the Charleston-North Charleston Metropolitan Statistical Area as established and published by the United States Department of Housing and Urban Development. The City Parcels shall be subject to the Rental Restrictions (as defined in the Transfer Agreement) and the Sale Restrictions (as defined in the Transfer Agreement), which restrictions shall run with the land.

Section 2.13 Miscellaneous Development Considerations.

2.13.1 Final Survey. The Developer shall undertake and cause to be prepared, at its sole expense, a final, recordable survey and plat of the City Parcels, and said survey shall depict the Redevelopment in such detail as to (i) aid the Parties in drafting the relevant legal boundary descriptions, (ii) show any and all utility and sewer easements and on the ground structures and devices that shall or could pose construction issues, and (iii) show all existing piles and pile caps on the City Parcels that cannot be removed and that may pose construction issues for the City Parcels. The City shall, to the extent practicable, supply personnel and expertise and shall cooperate with the Developer's personnel and contractors hired by the Developer to finalize conceptual plans, construction plans, and aid in shepherding the housing development from inception to final occupancy. The Developer hereby acknowledges that the City's Design Review Committee, Technical Review Committee and all other applicable boards and commissions shall have jurisdiction over the Redevelopment.

2.13.2 Piles and Pile Caps. The Parties anticipate that the existing Cooper River Bridge piles and pile caps located on the City Parcels shall not be relocated.

2.13.3 Voluntary Cleanup Contract. The Developer hereby acknowledges that the City Parcels are subject to that certain Voluntary Cleanup Contract by and between the City and South Carolina Department of Health and Environmental Control ("**DHEC**") Voluntary Cleanup Contract 11-6027-NRP dated September 23, 2011 (the "**VCC**"). Developer may elect to add Future Parcels (as applicable) to the VCC in its sole discretion. Developer shall be responsible for (i) the preparation of a management plan, typically referred to as a Site Management Plan or Soil Management Plan, for management of contaminated soils and/ or groundwater disturbed during construction of the Redevelopment, and (ii) Developer's receipt of a certificate known as a Certificate of Completion for the VCC from DHEC. The City shall use commercially reasonable efforts to cooperate with the Developer in such endeavor.

2.13.4 Construction of New Stormwater Drainage System. The Developer shall be responsible for designing and constructing a new stormwater drainage system, which shall meet all stormwater regulatory requirements applicable to the real property comprising the Redevelopment. Such system may include the installation of one or more apparatuses designed to manage the water runoff of the Redevelopment and act a water retention system for the Redevelopment (the "**New Drainage System**"), all as more particularly contemplated in that certain report entitled "Foundation Exploration Engineering Studies and Analyses for Proposed Grace Bridge Neighborhood, Housing Project, Lee and Nassau Streets, Charleston, South Carolina" prepared by Soil Consultants, Inc. and dated May 26, 2016 (the "**Engineering Report**"). The New Drainage System will tie into the existing drainage system located within the Drainage Easement. The Developer acknowledges that the City's public service engineer must review and approve the design and cost allocation of the New Drainage System prior to Developer or Developer's contractor commencing with such construction work. The City shall be responsible for

reimbursing the Developer for the cost of the New Drainage System up to an amount of \$300,000 (the “***Drainage System Funds***”). Reimbursement for costs associated with New Drainage System are in addition to the \$2,000,000.000 made available by the City to the Developer to defray Redevelopment Cost of the project as referenced in Section 2.1 Duty to Construct. The Developer (or Developer’s General Contractor upon written directive by Developer) shall be entitled to receive from the City disbursements of the Drainage System Funds within thirty (30) days of delivering to the City a Drainage System Disbursement Request. As used herein, the term “***Drainage System Disbursement Request***” shall mean a written request from the Developer or Developer’s contractor which shall be in identical form as a Disbursement Request (as hereinafter defined).

2.15.5 Construction of Bike Path. The Developer hereby acknowledges and agrees that it shall be responsible for the cost and construction of the basic elements and landscaping of the twenty foot (20’) bike path that has been proposed over some or all of the parcels in the Redevelopment (the “***Bike Path***”). Further, the Developer agrees that the plans for the construction of the Bike Path shall be included in the Plans.

2.15.6 Construction of Alleyway. The Developer hereby agrees to work with the owner of three adjacent properties, Meeting Street 13, LLC, a South Carolina limited liability company (the “***Adjacent Landowner***”), and to convey an easement, up to ten (10) feet in width, to allow for the construction of an alleyway between Parcel A and the three properties owned by Adjacent Landowner. The alleyway shall run parallel to Meeting Street, from Lee Street to Cooper Street.

ARTICLE III – DISBURSEMENT REQUEST

Section 3.1 Disbursement of Construction Funds. The Developer (or Developer’s contractor upon written directive by Developer) shall be entitled to receive from the City the disbursement of the Construction Funds. The City shall disburse the Construction Funds to the Developer pursuant to Section 3.4 herein below following receipt of (i) written notice that Developer has entered into the Construction Contract (as defined in the Transfer Agreement), and (ii) an approved Disbursement Request. Additionally, the Developer shall give written notice to the City at least thirty (30) days prior to the date that the Developer estimates the Construction Contract will be finalized and in accordance with Section 2.1 hereinabove.

Section 3.2 Disbursement Request. When the Developer seeks the aforementioned disbursement, the Developer shall deliver to the City an application for payment on Standard AIA forms acceptable to the City Project Manager, together with the information and documentation required pursuant to the applicable sections of Article IV hereof as applicable for such Disbursement and, in all cases, the following documentation in form and content reasonably satisfactory to the City (collectively, a “***Disbursement Request***”):

3.2.1 Design Professional's Certificate. A certificate from the Design Professional that the work proposed to be performed on the City Parcels is substantially consistent with the Plans and all other Applicable Requirements; and

3.2.2 Construction Contract. A fully executed construction contract by and between the Developer and Developer's general contractor requiring the general contractor to perform and complete the construction of the Redevelopment.

3.2.3 Other Information. Such other information, certificates, inspections, opinions and reports as may be reasonably requested by the City for the purposes of confirming that the Disbursement being used for the purpose intended.

Section 3.3 City's Approval. Within six (6) business days following the City's receipt of a Disbursement Request or re-submittal of a revised Disbursement Request (excepting Saturdays, Sundays, and legal public holidays), the City Project Manager shall provide to the Developer its written notice of approval or rejection, as the case may be, of the Disbursement Request. In the event that the City Project Manager rejects a Disbursement Request, the City Project Manager shall provide to Developer a specific explanation of the reason for rejection and the requirements to remedy the deficiency.

Section 3.4 Payment of Disbursement Request. Within six (6) business days following the City's receipt of a satisfactory Disbursement Request and provided that all of the applicable conditions precedent as set forth in Article IV have been met, the City shall issue its approval for such Disbursement Request and direct to disburse such amount set forth in the Disbursement Request within fifteen (15) business days, provided, however, City shall make reasonable efforts to process and make such payments sooner. The City shall have no obligation to approve a Disbursement Request unless all of the conditions set forth in this Article III and the applicable conditions set forth in Article IV have been satisfied; provided, however, the City Project Manager may waive Developer's satisfaction of any condition from time to time in its sole discretion. Acceptance or approval by the City or any inspector designated by the City of a Disbursement Request or payment made in response to a Disbursement Request shall not constitute final acceptance or approval by the City of defective work.

Section 3.5 Reserved.

Section 3.6 Limited Liability of City. No member of the City Council, the Mayor, the City Project Manager, or any other past, present or future City employee, officer, attorney, agent or representative shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 3.7 Audit. The City Project or its designee shall have the right, during normal business hours in the Developer's offices (or such other place designated by the parties) and upon the giving of ten (10) days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Redevelopment and any bids taken or received for the construction thereof or materials therefor.

ARTICLE IV – CONDITIONS TO DISBURSEMENT

Section 4.1 Conditions Precedent to Disbursement. At least fifteen (15) days prior to the Disbursement Request the Developer shall provide, or shall cause its General Contractor to provide, with respect to the Redevelopment, the City with the following:

4.1.1 **Insurance Requirements.** A certificate of insurance for the Redevelopment naming the City as an additional insured and showing the following types of insurance and in the amounts set forth below, all of which must be from companies with an "A-" rating or better as rated by A.M. Best:

4.1.3.1 **Workers' Compensation Insurance.** Workers Compensation Insurance, as prescribed by applicable law covering all employees of the Developer's general contractor(s) and Employer's Liability coverage of Developer with limits as required by law.

4.1.3.2 **Commercial General Liability Insurance (Primary and Umbrella).** Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000.00 per occurrence for bodily injury, personal injury, and property damage liability.

4.1.3.3 **Automobile Liability Insurance (Primary and Umbrella).** When any motor vehicle (owned, non-owned and hired) is used in connection with work to be performed in connection with the Redevelopment, the general contractor for such Redevelopment shall provide (or cause to be provided by its subcontractors) Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage if such coverage is not maintained by the Developer or its Contractor, as applicable.

4.1.3.4 **Builders Risk Insurance.** When the general contractor for the Redevelopment undertakes any construction in connection with the Redevelopment, including improvements, and/ or repairs, it shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery, and fixtures that are or shall be part of the Redevelopment.

4.1.3.5

Contractor's Pollution Liability.

When any environmental remediation work is performed in connection with the Redevelopment which may cause a pollution exposure, Contractor's Pollution Liability shall be provided on claims made policy with limits of not less than \$1,000,000.00 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

4.1.2 Environmental.

Evidence reasonably satisfactory to the City that any environmental contamination located within the improvements located or to be located on the Redevelopment either is, or shall be, remediated, contained, or otherwise addressed in a manner as required under state and federal laws and regulations to permit the use of such land for its intended purpose. Such evidence of environmental compliance shall be submitted by Developer to the City, or to City's selected consultant, as directed by the City. For the avoidance of doubt, Developer hereby acknowledges that it will comply with the VCC, and it will be responsible for (i) preparing a management plan, typically referred to as a Site Management Plan or Soil Management Plan, for management of contaminated soils and/ or groundwater disturbed during construction of the Redevelopment, and (ii) obtaining of a certificate known as a Certificate of Completion for the VCC from DHEC.

4.1.3 Compliance with Requirements; Permits.

A certificate of the Developer's Design Professional that the Redevelopment and the land on which it is located shall comply with all Applicable Requirements and that all permits necessary for construction have been obtained for the Redevelopment or can be obtained in the ordinary course.

4.1.4 Construction Documents.

Copies of the Construction Documents, including the Plans for the Redevelopment, and a certificate from the Design Professional that the Plans are in compliance with all applicable laws, zoning and other ordinances, rules, regulations, and restrictions affecting the performance of such work, and a completion and draw schedule and a breakdown of direct and indirect costs of the work on which all payment requests by the Developer shall be based. The Developer shall not modify or amend any of the Construction Documents without the prior written consent of the City, which consent shall not be unreasonably withheld, provided that the Construction Documents shall be amended as reasonably required to comply with any approved changes to the Plans or otherwise as reasonably requested by Developer with respect to change orders.

4.1.5 Collateral Assignment of Contracts.

A collateral assignment of the Construction Documents applicable to the Redevelopment in favor of the City, all of which shall be reasonably acceptable to the City as to form and content, together with all necessary consents from the Design Professional and general contractor.

4.1.6 Notice of Project Commencement.

Notice of Project Commencement with proof of filing as required under Section 2.11 hereof.

4.1.7 Representations True. All representations and warranties of the Developer under this Agreement and all other agreements delivered by the Developer in connection with this Agreement for the benefit of the City shall be true and correct in all material respects as of the date of the payment.

4.1.8 No Defaults. The Developer shall not be in default under the terms of this Agreement or any of the Construction Documents, or any other related agreement with or for the benefit of the City not cured within the time provided herein or therein, and no event shall exist which, by notice, would constitute an event of default by the Developer under the terms of this Agreement.

4.1.9 Compliance. The Developer shall have complied with all agreements and satisfied in all material respects all conditions on its part to be performed or satisfied at or prior to the date of such payment.

Section 4.2 Reserved.

Section 4.3 Reserved.

Section 4.4 Reserved.

Section 4.5 Minority and Women's Business Enterprise Program. Developer agrees to establish a Minority and Women's Business Enterprise Program in order to ensure that MBE/WBEs have equal opportunity to participate in the design and construction of the Redevelopment. A MBE is a small business owned and controlled by one or more minority individuals while a WBE is a small business owned and controlled by one or more women. The minority or women must own fifty-one percent (51%) of the business and they must control the management and daily operations of the business in order to qualify. Developer agrees to utilize the goals of the City's Minority Business Enterprise Program. Goals for the overall project are 20% MBE/WBE combined participation which goals shall be monitored consistent with the MBE Good Faith Effort Program established by the City's Diverse Supplier Process Improvement Team, pursuant to Section 2-268 of the Code of the City of Charleston entitled, "Plan for the utilization of disadvantaged business enterprises (DBEs) and women business enterprises (WBEs)" as same may be hereafter amended in the development of this project by agreement of the parties. Goals for some individual contracts and procurements may be adjusted depending on the availability of qualified certified MBE/WBEs to perform all or part of the contract.

Section 4.6 Additional Terms or Agreements. The City and Developer agree that they shall execute amendments to this Agreement or other documents as may be reasonably necessary to effectuate this Agreement.

ARTICLE V – CITY’S REVIEW AND INSPECTION RIGHTS;

CONVEYANCE TO THE CITY

Section 5.1 City Project Manager. The City shall designate a qualified individual to act as City Project Manager for the purposes of monitoring the Developer’s construction of the Redevelopment in accordance with all Applicable Requirements and Section 3.3 of this Agreement. The City Project Manager shall coordinate with all city departments in a timely manner in order to ensure that that he or she has the necessary environmental, engineering and other resources readily available to discharge the duties of this position. The City Project Manager shall respond as promptly as reasonably possible to requests for approval and permits from Developer. All inspectors for the City shall, upon entry to the Redevelopment site, check in with the site superintendent or project manager. While on the site, all inspectors for the City shall comply at all times with all applicable safety guidelines required by applicable law and reasonable site safety rules imposed by the Developer’s contractor.

Section 5.2 City Review and Monitoring; Proposed Amendments. The City Project Manager may, in addition to the inspecting Design Professional, monitor the construction of the Redevelopment for compliance with all Applicable Requirements. Provided, however, such review and monitoring shall not impose any liability on the City for compliance of the Redevelopment or any part thereof with any such requirements.

Section 5.3 Reserved.

Section 5.4 Non-Compliance. If in the course of its review of the Redevelopment the City determines that the Developer has failed to construct the Redevelopment in accordance with all Applicable Requirements, the City shall provide specific, written notice of how the Redevelopment does not comply with the Applicable Requirements.

Section 5.5 Failure to Complete. If after commencement of physical work on the Redevelopment, the Developer fails to complete such Redevelopment within the time period provided in the Project Schedule (excluding delays due to *force majeure*), the City may provide specific, written notice of such failure. In the event that the Developer fails to diligently pursue and complete the Redevelopment within sixty (60) days after written notice from the City of such failure (as such date shall be extended if Developer timely commenced such cure and is proceeding with due diligence to complete such cure), the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, with respect to the Redevelopment the City shall have the right to draw on the Construction Funds to complete the Redevelopment and reduce the amount of Construction Funds to which the Developer is entitled under this Agreement by the amount necessary to complete such Redevelopment.

ARTICLE VI – EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default. The following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of the Developer.

6.1.1 Bankruptcy. The Developer shall voluntarily file for reorganization or other relief under any federal or state bankruptcy or insolvency law, or the Developer shall have any involuntary bankruptcy or insolvency action filed against it which is not dismissed within one hundred eighty (180) days, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, or shall suffer an attachment or levy of execution to be made against the property it owns which is not dismissed within one hundred eighty (180) days.

6.1.2 Stop Work. The Developer shall for reasons other than *force majeure* or other reasonable causes abandon or substantially suspend construction of the Redevelopment or the Developer abandons the development of the Property in its entirety and such abandonment or suspension is not cured or remedied within thirty (30) days after written demand is made by the City on the Developer or such greater period of time if Developer is proceeding diligently to complete such cure.

6.1.3 Covenant Default. The Developer shall breach any material covenant or default in the performance of any material obligation under this Agreement, any of the Construction Documents, or any other agreement with or for the benefit of the City.

6.1.4 Misrepresentation. The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with the Redevelopment or any representation or warranty contained in this Agreement shall have been or shall be untrue or incorrect in any material respect when made or when deemed made.

6.1.5 Invalidity. The Developer shall at any time challenge the validity of this Agreement, or any of the documents related thereto, or any of the foregoing shall be deemed invalid, illegal or unenforceable and Developer refuses to enter into such modifications or new agreements as required to establish the validity, legality, or enforceability thereof.

Section 6.2 Right to Terminate. If any such event of default occurs and is not cured within the applicable cure period, the City shall give written notice of its knowledge thereof to the Developer and the Developer agrees to meet and confer with the City or appropriate City staff as to options available to assure timely completion of the Redevelopment. Such options may include, but are not limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the City the grounds for such termination; provided that no cure period shall apply for any voluntary bankruptcy filing listed in Section 6.1.1; and provided that in the event of a default listed in Section 6.1.2, no additional cure period shall be provided beyond the applicable cure period. Such period shall be extended if the Developer is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof) the default has not been cured, the City may then terminate this Agreement and any right of the Developer to seek any further Disbursements and, in addition and without limitation thereto, the City may seek any and all other remedies available at law or in equity.

Section 6.3 Additional Remedies. In addition to the rights set forth above, the City shall have the following rights:

6.4.1 **Specific Performance.** Upon any termination of this Agreement due to an event of default by the Developer, the City may, but shall not be required to, execute contracts for or perform any remaining work related to the Redevelopment not otherwise completed. In addition to any of the foregoing rights and remedies, the City may pursue all other rights and remedies available to it under this Agreement and otherwise available to it at law or in equity including the remedy of specific performance.

6.4.2 **Right of Repurchase.** Upon any termination of this Agreement due to an event of default by the Developer, the City shall have the right and option, but not the obligation, to repurchase the City Parcels from the Developer at no cost to the City (the “*Repurchase Option*”). The closing of the repurchase of City Parcels shall take place within sixty (60) days following delivery of notice of exercise of the Repurchase Option.

Section 6.4 Waivers. To the extent permitted by law, the City may waive a specific breach or default by the Developer hereunder by delivering to the Developer notice of such specific waiver in writing signed by the City Project Manager. Provided, however, no waiver of any default or breach by the Developer hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no such express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. No advance of Construction Funds shall constitute a waiver of any of the provisions, conditions or obligations set forth herein, nor shall any advance of Construction Funds constitute an affirmation by the City that all provisions, conditions and requirements of this Agreement have been met.

Section 6.5 Assignment of Contracts. Should the City terminate this Agreement as set forth herein, the City shall have the right, but not the obligation, to require the Developer to assign to the City each contract agreement for the Redevelopment, provided (1) such assignment shall be effective only after termination of the Agreement and only for the contract agreements which the City accepts by notifying the Developer and applicable contractor in writing; and (2) this assignment is subject to the prior rights of a surety, if any, obligated under any surety bonds relating to this Agreement and/ or the Redevelopment. Developer agrees that all contracts pertaining to the Redevelopment shall expressly acknowledge and permit the forgoing rights of the City.

Section 6.6 City’s Security Interest in the City Parcels. In order to secure the performance of the covenants and agreements of the Developer herein contained, Developer and the City shall execute and record in the RMC Office for Charleston County mutually-agreeable documentation memorializing City’s security interest in the City Parcels (the “*Security Instrument*”).

ARTICLE VII – GENERAL MATTERS

Section 7.1 City Council Legislative Discretion. The use by the City of its reasonable efforts shall in no way impair or limit the authority of the City Council to exercise its discretion in taking legislative action and shall in no way require City Council to take any legislative action. In satisfying their obligations under this Agreement, the City and the Developer shall act diligently and in a timely fashion.

Section 7.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service; (2) electronic communications, whether by telex, facsimile, telegram or other telecopy, with proof of receipt by addressee; (3) overnight courier; or (4) registered or certified first class mail, postage prepaid, return receipt requested.

To whom notice is to be given:

If to the City: The City of Charleston
 Attention: Clerk of Council
 City Hall
 80 Broad Street
 Charleston, South Carolina 29401

With a copy to: The City of Charleston
 Department of Housing and Community Development
 Attention: Geona Shaw Johnson
 P.O. Box 304-29402
 Charleston, South Carolina 29402

 City of Charleston
 Attention: Corporation Counsel
 Legal Department
 50 Broad Street
 Charleston, South Carolina 29401

If to Developer: Housing Authority of the City of Charleston
 Attention: Donald J. Cameron, Chief Executive Officer
 550 Meeting Street
 Charleston, South Carolina 29403

With a copy to: Oberman and Oberman, Attorneys
 60 Markfield Drive, Suite 2
 Charleston, South Carolina 29407

Any Party may change the address for notices to such Party by written notice to the other Parties to this Agreement. Notice given by personal service shall be effective upon the date delivered, if personally delivered, or the date of attempted delivery, if refused. Notice given by

mail shall be effective on the third business day after posting. Notice by overnight courier shall be effective on the next business day following delivery of such notice to such courier. Notice given by fax shall be effective on the date of completion of the fax transmission, so long as such notice is further sent by personal service, the U.S. Mail, or overnight courier, as aforesaid.

Section 7.3 Amendment. This Agreement may be amended only by a writing signed by the City (or City Project Manager where specifically authorized) and the Developer.

Section 7.4 Entire Agreement. This Agreement and the related agreements executed by the Parties simultaneously herewith set forth all agreements, understandings, and covenants between the Developer and the City relative to the subject matter hereof.

Section 7.5 Waiver. Waiver by the City or the Developer with respect to any breach or default under this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer.

Section 7.6 Remedies Cumulative. The remedies available to the Parties are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

Section 7.7 Disclaimer. Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

Section 7.8 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

Section 7.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Section 7.10 Severability. If any section, subsection paragraph, sentence, clause or phrase of this Agreement or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement, or any part thereof.

Section 7.11 Governing Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law principles.

Section 7.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns to whom the rights and obligations are specifically covered or assigned. Nothing herein shall prohibit the alienation, sale

or any other transfer of all or any portion of the Property or any rights, interests or obligations therein, provided that no such alienation, sale or any other transfer of all or any portion of the Property or the rights therein shall operate to release the Developer from its obligations or liability hereunder as to that portion of the Property so transferred, without the prior written consent of the City which consent may be given or withheld in the City's sole discretion in each instance, and provided such transferee agrees to comply with the terms of this Agreement.

Section 7.13 Force Majeure. Neither the City nor the Developer, nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty or act of terrorism, strike, widespread shortages of construction materials, governmental delays, unusually adverse weather conditions such as, by way of illustration and not limitation, hurricanes, flooding, tornadoes or cyclones, and other material adverse events or conditions beyond the reasonable control of the party affected which in fact delay such party in discharging its obligations hereunder.

Section 7.14 Order of Precedence. Should there be any conflict between the provisions of this Agreement and the Indenture, the order of precedence shall be the Indenture and then this Agreement.

Section 7.15 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the City, the Developer and their successors and assigns. No other person or entity is an intended third party beneficiary or shall have the right to enforce any of the provisions of this Agreement.

Section 7.16 Recitals; Exhibits. The recitals set forth on the first page of this Agreement and all Exhibits attached hereto, are incorporated into and made a part of this Agreement.

Section 7.17 Recovery of Attorney Fees. In the event of litigation or other legal action relating to enforcement of rights under this Agreement, the substantially prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party.

*****Remainder of Page Intentionally Left Blank*****
[SIGNATURE PAGES FOLLOW]

14.

15.

16. **WITNESSES:
THE CITY**

HOUSING AUTHORITY OF

17.

OF CHARLESTON

18.

19.

20. _____

By: _____

21.

Donald J. Cameron

22.

Its: Chief Executive Officer

23. _____

24.

25.

26.

27.

28.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING was acknowledged before me this _____ day of _____, 2016 by Housing Authority of the City of Charleston, by Donald J. Cameron, its Chief Executive Officer.

Notary Public for the State of South Carolina
My Commission Expires: _____
Printed Name of Notary: _____

[SEAL]

29.

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

[see Plat attached.]

**EXHIBIT B
TO
DEVELOPMENT AGREEMENT**

Plans

[see attached.]

EXHIBIT C
TO
DEVELOPMENT AGREEMENT

Project Schedule

[see attached.]

**EXHIBIT D
TO
DEVELOPMENT AGREEMENT**

Redevelopment Budget; Schedule of Values

[see attached.]

**EXHIBIT E
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Permitted Exceptions

1. Ad valorem real property taxes and user fees for the year of closing (provided same are not yet due and payable) and all subsequent years.
2. The Development Agreement referenced in the Transfer Agreement.
3. The Rental Restrictions referenced in the Transfer Agreement.
4. The Sale Restrictions referenced in the Transfer Agreement.
5. All restrictive covenants, rights of way and easements of record as of the date of this Transfer Agreement, if any, provided they do not make the title unmarketable or uninsurable.
6. All existing federal, state, county, municipal and local governmental statutes, ordinances, rules and regulations, including, without limitation, zoning ordinances.

**EXHIBIT F
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Redevelopment Contingencies Addendum

1. **Definitions:** In addition to the words and terms defined elsewhere in the Transfer Agreement, the following terms shall have the following meanings for purposes of this Addendum:

- (A) “Architect” means the Developer’s design architect or such other architect or architects as shall be employed by the Developer for the Redevelopment.
- (B) “Architect’s Contract” means the agreement between the Developer and the Architect providing for architectural services to the Developer relating to the Redevelopment.
- (C) “Change Orders” means any amendment or modification of the Development Documents relating to a change in excess of \$100,000.00.
- (D) “Construction Contract” means the agreement between the Developer and the General Contractor signed by all of the parties thereto and dated on or before the date that is three (3) months after the Closing.
- (E) “Cost Estimate” means the detailed schedule and construction budget prepared by the Developer, as delivered by the Developer to the City, showing a detailed itemization of the costs of completing the Redevelopment.
- (F) “Developed Units” means each of the housing units, once developed in accordance with the Development Agreement.
- (G) “Developer” means the original Developer named above, and its successors and assigns.
- (H) “Developer’s Inspector” means an engineering or architectural firm hired by the Developer, which may be the Architect.
- (I) “Development Documents” means the Construction Contract together with the general and special conditions attached thereto, the Architect’s Contract, the Drawings, any Change Orders, and the General Contractor’s bids and proposals.
- (J) “Development Schedule” means, with respect to the Redevelopment, a schedule prepared by the Developer and delivered to and approved by the City providing a detailed schedule of the dates by which portions of the Redevelopment shall be completed, including any amendments or modifications thereto as may be made by the Developer from time to time according to the terms of the Development Agreement.

- (L) “Drawings” means the final plans and specifications for the Redevelopment, including any amendments or modifications thereto as may be made by the Developer from time to time.
- (M) “General Contractor” means the contractor as shall be employed by the Developer with respect to the Redevelopment.
- (N) “Insurance Requirements” means the City’ requirements for the policies of insurance as provided for and required by the Transfer Agreement and the Development Agreement.
- (O) “Legal Authorities” or “Legal Authority” means any federal, state or local governmental or quasi-governmental body, office, department, agency, board, court or other instrumentality thereof exercising jurisdiction over the Development of the Project, the operation and occupancy of the Project, the Developer, the performance by the Developer of any act or obligation, or the observance by the Developer of any agreement, provision or condition of any nature whatsoever contained in this Agreement.
- (P) “Legal Requirements” means any law, ordinance, order, code, rule, regulation or standard of any Legal Authority.
- (Q) “Project” means the Property and the Redevelopment collectively.
- (R) “Substantial Completion” or “Substantially Complete” means the issuance of a Certificate of Occupancy (as defined in the Development Agreement) granting final approval of the Redevelopment. Anything contained herein to the contrary notwithstanding, the granting of final approval shall not constitute final approval or acceptance of defective work, and shall not waive any rights or warranties available to City hereunder, at law or in equity.

2. The City shall not be obligated to close and convey the City Parcels to the Developer under the Transfer Agreement unless the following conditions shall have been satisfied for the Property, as applicable, on or before the Closing:

- (A) The representations and warranties of the Developer contained in the Transfer Agreement, the Development Agreement, and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the closing for the Property.
- (B) The Developer shall have satisfied each of the conditions precedent to the closing for the Property as contained in the Transfer Agreement.
- (C) The Developer, at its sole cost and expense, must have provided or caused to be provided to the City, in a format prescribed by the City, and the City must have received, reviewed and approved the following:

- (1) Authority and Capacity: Evidence of the Developer's organization, valid existence, authority to enter into the Development Agreement, good standing, current compliance with all laws, payments of taxes, and such other documents as the City may require.
- (2) Financial Statements: The Developer shall provide the City with such financial reports and information relating to the Developer and the Project as the City may request (including, without limitation, balance sheets, profit/ loss statements, and tax returns for the current year and the prior three (3) years), which financial reports and information shall be prepared in accordance with the requirements of the City, certified by an officer of the Developer as the case may be, and, if requested by the City, prepared by an independent certified public account.
- (3) Other Developer Information: The Developer shall provide the City with such other reports and information relating to the Developer as the City may request, including, without limitation, information on the Developer's background, Members experience, qualifications, list of projects, and resumes of key staff members.
- (4) Insurance: Upon the reasonable request of the City, the original policies of insurance or certificates of insurance satisfactory to the City satisfying the Insurance Requirements, together with evidence of the payment of premiums therefore. Such insurance shall include, without limitation, the Developer's effective, paid-up policies of fire, flood and all-risk replacement cost coverage of all insurable improvements on the Property (during and with respect to Development, in builder's risk completed value form); workers compensation insurance; comprehensive general public liability insurance; and such other or additional insurance, and covering such risks, as the City requires. All policies must be written by insurers, in amounts, with endorsements, and on terms and conditions satisfactory to the City. If requested by the City, the Developer shall have the City named as an additional insured under the above-referenced insurance policies. The Developer shall keep all such insurance coverage in place with respect to the Property and each Developed Unit until such time as Redevelopment has been Substantially Completed.
- (5) Legal Opinion: An opinion of the Developer's counsel to the effect that the Developer is duly organized and validly existing and in good standing under the laws of the state of its organization, authorized to do business in the State of South Carolina, with full power to own the Property and execute, deliver and perform its obligations under the Development Agreement; that the Development Agreement is valid and legally binding and enforceable against the Developer in accordance with its terms, subject to laws pertaining to bankruptcy and insolvency; and opining to such other matters as may be required by the City.

- (6) Errors and Omissions Insurance: To the extent the Architect has been selected prior to Closing, copies of the Architect's and the Developer's Inspector's certificate of Errors and Omissions Insurance in an amount acceptable to the City, and endorsed so that the policies shall not be terminated, expired or canceled without thirty (30) days advance written notice to the City.
- (7) Development Schedule: The Developer shall deliver the Development Schedule to the City and the City must approve same. If approved by the City, the Developer may revise the draw schedule for the funding by the City of the Redevelopment, as included in the Development Schedule, by submitting the revision to the City before the fifteenth (15th) day of each month.
- (8) Development Team: The Developer shall provide in writing a list (including names, addresses and telephone numbers) of all development team members that have been selected on or before the Closing, including, but not limited to, the Developer's attorney, General Contractor, Architect, surveyor, consultants, etc.
- (9) Survey: A current survey of the Property, recorded in the RMC Office for Charleston County.
- (10) Zoning: Evidence that all applicable zoning ordinances and similar Legal Requirements permit the use for which the Redevelopment is intended and have been and shall be complied with (including building codes and requirements as to parking, building setbacks, lot size and ingress and egress).
- (11) Disabilities Laws: Evidence that the Developer, the Project and the Drawings, and the Development (including each Developed Unit) and present and intended use and occupancy of the Project, do and shall comply with all other applicable Legal Requirements, including those regarding access and facilities for handicapped or disabled persons.
- (12) Cost Estimate: The Cost Estimate.
- (13) Taxpayer Identification Number: The federal taxpayer identification number for the Developer.
- (14) Miscellaneous: Such other evidence, documents, certificates and items reasonably requested by the City.

If the above contingencies are not satisfied by the Closing, then either the Developer or the City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement. Each of the above contingencies shall survive the Closing and the Developer agrees that such contingencies shall remain satisfied at all time prior to the Substantial Completion of the entire Redevelopment.

3. Within one hundred eighty (180) days after the Closing, Developer shall satisfy the following conditions:

- (A) The Developer, at its sole cost and expense, must have provided or caused to be provided to the City, in a format prescribed by the City, and the City must have received, reviewed and approved the following:
 - (1) Cost Estimate: The Cost Estimate with any modifications thereto. If requested by the City, the Developer must also provide the City or cause to be provided to the City, and the City must have received, reviewed and approved, consents for the City to use the Development Documents in connection with the Redevelopment and collateral assignments to the City of the Developer's rights in the Development Documents and in such other contracts and agreements as the City shall require. All Development Documents, including, without limitation, the Construction Contract, must be guaranteed maximum price contracts.
 - (2) Soil Tests: Soil tests and a foundation report regarding the Property by an engineer satisfactory to the City; provided, however, the City, at its option, may agree to waive this requirement if the Architect, General Contractor, or engineer provides the City with written certification satisfactory to the City that such tests and reports are not necessary.
 - (3) Sales Pro-forma: A sales pro-forma evidencing the projected price for which the units within the Redevelopment shall be sold by the Developer; provided, however, the parties hereby acknowledge and agree that the projected price may change as provided in the Development Agreement based on unexpected and/ or unanticipated costs actually incurred by the Developer in the development of the City Parcels.

**EXHIBIT G
TO
TRANSFER AND DEVELOPMENT AGREEMENT**

Developer's Pre-Closing Work

The following terms and conditions are incorporated into, and are a part of the Agreement, as if the same had been fully stated therein. Any capitalized, undefined terms used herein shall have the meanings ascribed to such terms in the Transfer Agreement.

(a) City hereby grants to Developer, its licensees, permittees, invitees and agents a non-exclusive license and permission from the Effective Date of this Agreement until the Expiration of the Due Diligence Period to enter upon the City Parcels during the Due Diligence Period solely for the purpose of the Developer's Pre-Closing Work subject to the terms of this Agreement.

(b) As used herein, "*Developer's Pre-Closing Work*" shall mean certain architectural and planning work, including the item contemplated in Section 2.13.3 of the Development Agreement, all in accordance with the "*Plans*" and the "*Approved Contract*" attached hereto as **Exhibit G-1** and all applicable laws, rules and regulations.

(c) In the event Developer (i) timely receives all necessary governmental approvals (including, without limitation, necessary building permits) for the Plans, (ii) notifies City that it wishes to proceed with Developer's Pre-Closing Work, and (iii) has entered into the Approved Contract with a fully licensed, bonded and insured general contractor ("*Contractor*") Developer shall be entitled to begin Developer's Pre-Closing Work in accordance with the terms and conditions hereof. Developer's Pre-Closing Work shall be performed in strict conformity with the Plans, and no deviation therefrom shall be permitted without the written consent of City.

(d) During construction of Developer's Pre-Closing Work, Developer shall report monthly to City on the construction progress.

(e) In the event this Agreement is terminated for any reason other than a default by City, all Developer's Pre-Closing Work shall remain on the City Parcels, and shall become the property of City, and, at City's election, all plans (including, without limitation, the Plans) studies, reports, contracts (including, without limitation, the Approved Contract), permits, entitlements and approvals shall be assigned from Developer to City. Nothing herein shall be construed so as to subject the City Parcels, or permit the City Parcels to be subjected to liens of any laborer, contractor, mechanic or materialman or to any other liens arising out of or connected with the development, construction or maintenance of any improvements, alterations or additions to existing improvements (except for statutory liens arising in the ordinary cause which are promptly discharged), unless City expressly consents to such liens in writing. If requested by City, Developer shall be required to "bond off", within fifteen (15) business days, any filed mechanic's liens in accordance with SC Code section 29-5-110, as amended. Developer's obligations under this Section shall survive the Closing, or the termination or expiration of this Agreement.

(f) Insurance Required: Beginning on or before the date that Developer begins Developer's Pre-Closing Work, and continuing at all times thereafter until the expiration of the Due Diligence Period, Developer shall provide (or shall cause its contractor to provide), at Developer's sole expense the following policies of insurance with respect to the City Parcels, each naming City as a named insured and Developer as an additional named insured (collectively, the "**Policies**" and each a "**Policy**"):

(1) Liability. A general liability Policy with limits of \$1,000,000 per person/occurrence for bodily injury for injury or death of any one person, \$100,000 for property damage to or loss of property of others, subject to an aggregate limit of \$2,000,000 for all bodily injury and property damage or loss due to an insured risk.

(2) Builder's Risk. A builder's risk Policy in an amount not less than 100% of the cost of the Developer's Pre-Closing Work being performed by Contractor under the Approved Contract.

(3) Worker's Compensation. Worker's compensation insurance insuring against and satisfying Developer's obligations and liabilities under the worker's compensation laws of South Carolina, including employer's liability insurance in the limits required by South Carolina; and

(4) Automobile Liability. Comprehensive automobile liability at a limit of liability not less than \$1,000,000 combined bodily injury and property damage.

(5) Policy Documents. Developer shall deliver to City receipts evidencing payment of the Policies' premiums and certificates of insurance evidencing that the terms of this Article 14 have been met prior to the date on which such coverage is needed and thereafter Developer shall deliver replacement certificates of insurance not less than fifteen (15) days prior to the expiration of any Policy.

(6) Proceeds Collection. When City is authorized hereby to collect any proceeds due under any Policy, City shall not be liable to Developer or any other entity or person due to City's failure to collect any such proceeds.

(g) Hazardous Waste.

(1) In General. Developer shall not use, generate, manufacture, produce, store, transport, treat, dispose of or permit the escape or release on, under, about or from the City Parcels, or any part thereof, of any Hazardous Materials. As used herein, "**Hazardous Materials**" means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material or waste, or toxic substance under any Hazardous Materials Law, (b) is regulated, controlled or governed by any Hazardous Materials Law or other applicable law, (c) is petroleum or a petroleum product, or (d) is asbestos, formaldehyde, a radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials). As used herein, "**Hazardous Materials Law**" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the City Parcels, or soil and ground water conditions, including, but not limited to, the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other law or legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing. If Developer's use requires the use and/or storage of any Hazardous Materials on, under or about the City Parcels, Developer shall provide written notice to City, prior to such use or storage, of the identity of such materials and Developer's proposed plan for the use, storage and disposal thereof; and such use, storage and disposal shall be subject to City's approval, in City's sole and absolute discretion. If City approves such proposed use, storage and disposal of specific Hazardous Materials, Developer may use and store upon the City Parcels only such specifically approved materials and shall comply with any conditions to such approval as City may impose in its sole and absolute discretion. City's permission hereunder may be withdrawn or modified at any time in City's sole and absolute discretion. Developer shall fully and promptly comply with all Hazardous Materials Laws at all times prior to Closing, and in the event the Agreement is terminated prior to Closing, Developer shall remove and dispose of all Hazardous Materials affecting the City Parcels resulting from the use or occupancy thereof by Developer or its agents, employees, suppliers, contractors, subtenants, successors and assigns. Notwithstanding the foregoing, City consents to Developer's above-ground use, storage, transport and off-site disposal of products containing small quantities of Hazardous Materials (e.g., cleaning solutions, shampoos, conditioners, hair products and materials), provided Developer shall handle, use, store, transport and dispose of such Hazardous Materials in a safe and lawful manner and in accordance with all applicable manufacturer's recommendations and shall not allow such Hazardous Materials to contaminate the City Parcels and further provided that in the event, a governmental agency requires any additional equipment or system to be added to the City Parcels based on such Developer's use, storage, transport and offsite disposal of such materials, Developer shall pay for any such equipment or system.

(2) Environmental Indemnity. Developer shall cause its General Contractor to indemnify, protect, defend and hold City (and its employees and agents) harmless from and against any claim, demand, investigation, proceeding, action, suit, judgment, award, fine, lien, loss, damage, expense, charge or cost of any kind or character and liability (including reasonable attorneys' fees and court costs) arising out of, in connection with, or directly or indirectly arising out of the use, generation, manufacture, production, storage, treatment, release, disposal or transportation of Hazardous Materials by Developer or General Contractor, or any successor, assignee or sublessee of Developer, or their respective agents, contractors, employees, licensees, or invitees, on, under, about or from the City Parcels, including, but not limited to, all foreseeable and unforeseeable costs, expenses and liabilities related to any testing, repair, cleanup, removal costs, detoxification or decontamination and the preparation and implementation of any closure, remedial action, site assessment costs or other required plans in connection therewith deemed required, necessary or advisable by City or any governmental authority, and any foreseeable or unforeseeable consequential damages. Any defense of City pursuant to the foregoing indemnity shall be by counsel reasonably acceptable to City. Neither the consent by City to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor Developer's strict compliance with all Hazardous Materials Laws shall excuse Developer from Developer's obligations hereunder. The foregoing indemnity shall be in addition to and not a limitation of the other indemnification provisions of this Agreement. Developer's obligations under this Section shall survive the Closing, or the termination or expiration of this Agreement.

(3) Reporting. Developer shall notify City in writing immediately after any of the following: (i) Developer has knowledge, or has reasonable cause to believe, that any Hazardous Materials have been released, discharged or located on, under or about the City Parcels, whether or not the same is in quantities that would otherwise be reportable to a public agency, (ii) Developer receives any warning, notice of inspection, notice of violation or alleged violation, or Developer receives notice or knowledge of any proceeding, investigation, order or enforcement action, under any Hazardous Materials Law concerning the City Parcels, or (iii) Developer becomes aware of any claims made or threatened by any third party concerning the City Parcels respecting Hazardous Materials.

(h) Indemnification. Developer shall cause its General Contractor to indemnify, save harmless, and defend City promptly and diligently at Developer's sole expense from and against any and all claims, demands, investigations, proceedings, actions, suits, judgments, awards, fines, liens, losses, damages, expenses, charges or costs of any kind or character and liability (including reasonable attorneys' fees and court costs) in connection with any accident, injury or damage whatsoever caused to any person or property arising directly or indirectly out of Developer's initial construction, alteration, renovation, remodeling and/or fixturing of the City Parcels (including, without limitation, the Pre-Closing Work), or out of the business conducted by Developer on the City Parcels or occurring in, on or about the City Parcels or any part thereof, or arising directly or indirectly from any act or omission of Developer or any of its contractors, subcontractors or concessionaires or subtenants or their respective licensees, servants, agents, employees, contractors or subcontractors, and from and against any and all costs, expenses and liability incurred in connection with any such claim or proceeding brought thereon. Developer agrees to cause its General Contractor to indemnify, defend and hold City (and its employees and agents) harmless of and from any and all claims, demands, investigations, proceedings, actions, suits, judgments, awards, fines, liens, losses, damages, expenses, charges or costs of any kind or character and liability (including reasonable attorneys' fees and court costs) arising from Developer's or General Contractor's use of the City Parcels. Any defense of City pursuant to the foregoing indemnities shall be by counsel reasonably acceptable to City. Developer's obligations under this Section shall survive the Closing, or the termination or expiration of this Agreement.

(i) Reimbursement of Costs for Pre-Closing Work. Developer shall be reimbursed the costs of the Pre-Closing Work under the terms set forth herein below.

Upon completion of all Pre-Closing Work, in full compliance with the Plans and the Approved Contracts, the Developer shall be entitled to reimbursement (at Closing) from City for its actual costs incurred, not to exceed \$50,000.00 (the "***Pre-Closing Work Costs***") (reimbursement for actual costs associated with Pre-Closing Work Costs are in addition to the \$2,000,000.000 made available by the City to the Developer to defray Redevelopment Costs (as defined in the Development Agreement) of the Project), in the performance of the Pre-Closing Work, subject to the following terms and procedures:

1. Reimbursement Request. When the Developer seeks reimbursement for the Pre-Closing Work Costs, the Developer shall deliver to the City an application for payment on such form agreed to by the City, together with the following documentation in form and content reasonably satisfactory to the City (collectively, the "***Reimbursement Request***"):

2. Work Completed. Written notice from the Developer or its designee of the completion of the Pre-Closing Work, in full compliance with the Plans and Approved Contract;

3. Evidence of Costs Incurred. Evidence that Developer has actually incurred the Pre-Closing Work Costs for which reimbursement is being sought; and

4. Lien Waivers. Duly executed waivers of mechanic's and materialmen's liens from the Developer's general contractor (partial or final, as applicable) who performed the Pre-Closing Work; a duly executed and acknowledged affidavit of the general contractor showing all subcontractors with whom the Developer's contractor has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Reimbursement Request, the amount to be paid to the contractor from such progress payment, statements that there are no claims of mechanic's or materialmen's liens submitted to the contractor at the date of such Reimbursement Request and that all due and payable bills with respect to the Pre-Closing Work have been paid to date or shall be paid from the proceeds of such Reimbursement Request.

Notwithstanding anything contained herein to the contrary, the City has previously reimbursed the Developer for certain Pre-Closing Work Costs, and any such disbursements shall work to reduce the \$50,000.00 amount specified hereinabove.

EXHIBIT G-1

[Attach Pre-Closing Work Plans and Approved Contract]

b.

REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: July 19, 2016
FROM: Colleen Carducci DEPT: BFRC
ADDRESS: 10 Wharfside Street
TMS: 459-00-00-169
PROPERTY OWNER: City of Charleston

1. Request approval for the Mayor to execute the attached Lease Amendment between the City and Tour Management Services, Inc. whereby the terms of the leased premises in the Charleston Maritime Center will be modified in regards to days and hours of operation, rent, and permitted equipment
2. Request approval for the Mayor to execute the attached License Agreement between the City and Tour Management Services, Inc. whereby the City grants a license to Tour Management Services to use an area of slip space at the Charleston Maritime Center for the sole use of the vessel, Carolina Belle.

ACTION REQUEST: _____

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Adelphi de Andreus JEB</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Jimmy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
<u>Director Special Projects</u>	<u>Cam Patterson</u>	<input type="checkbox"/>

FUNDING: Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?* Yes ☐ No ☐

*If approved, provide the following: Dept/Div. _____ Acct: _____

Balance in Account _____ Amount needed for this item _____

***Commercial Property and Community & Housing Development have an additional form.**

COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: July 19, 2016
FROM: Colleen Carducci DEPT: BFRC
ADDRESS: 10 Wharfside Street
TMS: 459-00-00-169
PROPERTY OWNER: City of Charleston

1. Request approval for the Mayor to execute the attached Lease Amendment between the City and Tour Management Services, Inc. whereby the terms of the leased premises in the Charleston Maritime Center will be modified in regards to days and hours of operation, rent, and permitted equipment
2. Request approval for the Mayor to execute the attached License Agreement between the City and Tour Management Services, Inc. whereby the City grants a license to Tour Management Services to use an area of slip space at the Charleston Maritime Center for the sole use of the vessel, Carolina Belle.

ACTION REQUEST: _____

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

ACTION: What action is being taken on the Property mentioned?

<input type="checkbox"/>	ACQUISITION	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	DONATION/TRANSFER	Donated By: _____	
<input type="checkbox"/>	FORECLOSURE	Terms: _____	
<input type="checkbox"/>	PURCHASE	Terms: _____	
<input type="checkbox"/>	CONDEMNATION	Terms: _____	
<input type="checkbox"/>	OTHER	Terms: _____	

<input type="checkbox"/>	EASEMENT	Grantor (Property Owner) _____	Grantee _____
--------------------------	-----------------	-----------------------------------	------------------

COMMERCIAL REAL ESTATE FORM

☐

PERMANENT

Terms: _____

☐

TEMPORARY

Terms: _____

☒

LEASE

Lessor: City of Charleston

Lessee: Tour Management Services, Inc.

☐

INITIAL

Terms: _____

☐

RENEWAL

Terms: _____

☒

AMENDMENT

1. Tour Management Services, Inc. will only operate the leased premises during 8 AM to 6 PM Monday – Saturday and 8 AM to 5 PM on Sunday. Lessee's equipment will be limited to no more than two (2) cash registers, one (1) freezer, one (1) display case, and one (1) refrigerator. The term of this Lease Amendment will be for a period of one (1) year and may be extended for two (2) additional two-year terms. The rental rate for the first year will be \$625.00 per month
2. The initial term of this License Agreement will be for one (1) year and may be extended for two (2) additional two-year terms. Licensee shall be permitted to operate the vessel at Charleston Maritime Center for daily harbor tours and private charters 7 days per week, 365 days per year, from 9:30 AM to 5 PM with no more than four (4) tours per day.

Terms: _____

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes

☐

No

☐

N/A

☒

Results: _____

Signature: _____

Colleen Carducci

Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.



Ratification
Number _____

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN LICENSE AGREEMENT AND LEASE AMENDMENT BETWEEN THE CITY OF CHARLESTON AND TOUR MANAGEMENT SERVICES, INC. IN ORDER TO ALLOW TOUR MANAGEMENT SERVICES, INC. TO OPERATE ITS VESSEL, THE CAROLINA BELLE, AT A SLIP AT THE CHARLESTON MARITIME CENTER AND TO SELL ADMISSIONS TICKETS TO THE CAROLINA BELLE AND RELATED MERCHANDISE OUT OF A 375 SQUARE FOOT SPACE IN THE CHARLESTON MARITIME CENTER UPON THE TERMS AND CONDITIONS MORE FULLY SET FORTH IN THE LICENSE AGREEMENT MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN AND THE LEASE AMENDMENT MARKED AS EXHIBIT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain License Agreement and Lease Amendment between the City of Charleston and Tour Management Services, Inc. in order to allow Tour Management Services, Inc. to operate its vessel, the Carolina Belle, at a slip at the Charleston Maritime Center and to sell admission tickets to the Carolina Belle and related merchandise out of a 375 square foot space in the Charleston Maritime Center upon the terms and conditions more fully set forth in the License Agreement marked as Exhibit A, attached hereto and incorporated by reference herein, and the Lease Amendment marked as Exhibit B, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this ____ day of _____, in
the Year of Our Lord, 2016, and in the 241st Year of the
Independence of the United States of America.

BY: _____
John J. Tecklenburg
Mayor, City of Charleston

ATTEST:

BY: _____
Vanessa Turner Maybank
Clerk of Council

LEASE AMENDMENT

“Lessee’s equipment in the Leased Premises shall be limited to no more than two (2) cash registers, one (1) freezer unit no larger than 6’ x 3’ x 3’, one (1) display case no larger than 8’ long, 3’ deep and 4’ high and one (1) refrigerator for drinks no larger than

8' high, 3' deep and 3' wide; provided these items shall not exceed the current electrical capacity of the available electrical outlets inside the Leased Premises."

4. Section 2 of the Lease is hereby amended to provide that the term of this Lease Amendment shall be for a period of one (1) year commencing on the ____ day of _____, 2016 (the "Initial Term"). The Initial Term may be extended for two (2) additional two-year terms on the same terms of this Lease Amendment provided Lessee is not in default of any terms of this Lease Amendment at the time of any renewal and further provided Lessor and Lessee shall consummate the terms of the 1st renewal period at least 45 days prior to the end of the Initial Term on _____, 2017 and consummate the terms of the 2nd renewal period at least 45 days prior to _____, 2018 unless earlier terminated by either party in accordance with Section 11 of the Lease.

5. Paragraph 3 of the Lease is hereby amended to provide that the rental rate for the first year of this Lease Amendment shall be \$625.00 per month. In the event the Lease Amendment automatically renews pursuant to Section 2 above, the rental rate for the renewal year shall increase by 3% per annum.

In all other respects, the Lease entered into by and between the Lessor and Lessee remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

IN THE PRESENCE OF:

THE CITY OF CHARLESTON

By: _____
John J. Tecklenburg, Mayor

ATTEST:

Clerk of Council

IN THE PRESENCE OF:

Carolene C. Cook

TOUR MANAGEMENT SERVICES,
INC.

By: Robert Scribner
Name: Robert Scribner
Its: President

EXHIBIT A

(The Lease)

**Charleston Maritime Center
10 Wharfside Street
Charleston, South Carolina 29401**

LICENSE AGREEMENT

This License Agreement is made this _____ day of _____, 2016 by and between The City of Charleston, (the "Licensor") and Tour Management Services, Inc. (the "Licensee") pursuant to the following terms and conditions:

1. License.

The City grants a license to Licensee to use a 78' x 28' area of slip space for moorage of the vessel hereinafter defined in Paragraph 2 herein, described in Section 2 herein, the slip being located at the Charleston Maritime Center (the "CMC") in the City of Charleston, South Carolina (the "Slip"). The Licensee's use of the Slip shall be restricted to its vessel, the Carolina Belle, as described in Paragraph 2 herein, only. The Licensee shall be prohibited from allowing any vessel other than the Carolina Belle to occupy the Slip except with prior written permission from Licensor in Licensor's sole discretion. Any violation of this provision by Licensee shall be immediate cause for termination of this License Agreement by Licensor. In the event of termination pursuant to this Section, Licensee shall be responsible to pay any legal fees incurred by Licensor to effectuate such termination.

2. Description of Vessel.

Vessel Name: Carolina Belle

Manufacturer: Chesapeake Shipbuilding

Vessel Size: 71.6' x 24'

Capacity: Multi-Passenger with capacity for approximately 300 persons

Registration Number: #933237 registered in South Carolina

Vessel Insurance: Seacoast Specialty Administrators, Inc. (the "Vessel")

3. Term.

The term of this License Agreement shall be from _____, 2016 to _____, 2017 (the "Initial Term"). The Initial Term may be extended for two (2) additional two-year terms upon the same terms and conditions as are set forth herein provided Licensee is not in default of any terms of this License Agreement at the time of any renewal. After five (5) years, consisting of the Initial Term and two (2) two-year renewals, a new License Agreement may be negotiated at least 45 days prior to _____, 2021.

4. License Fee, Dockage Fee, Dumpster and other fees.

The license fee and all other fees and costs due by Licensee to Licensor required pursuant to this License Agreement shall be defined and paid by Licensee in accordance with Schedule A, attached hereto and incorporated by reference herein ("Schedule A").

5. **Limitations on Use.**

Licensee shall be permitted to operate the Vessel for hire at CMC for daily harbor tours and private charters of the Charleston Harbor and surrounding waters 7 days per week, 365 days per year, from 9:30 am to 5:00 pm daily (the "Daily Tours"). Licensee shall be prohibited from conducting more than 4 Daily Tours per day. The last Daily Tour must return to the Slip no later than 5:00 pm each day.

Beyond the aforementioned hours, the Licensee shall be permitted to operate the Vessel for hire at CMC for evening private charters or evening tours ("Evening Event or Evening Events"); provided any departure by the Vessel of any Evening Event from the Slip shall be limited to the hours between 5 pm and 10:00 pm and no more than 4 times per week with the Vessel returning to the Slip no later than 10pm; provided, during any 3 consecutive months of Licensee's choosing, the Licensee shall be permitted to conduct Evening Events 5 times per week with the Vessel returning to the Slip no later than 10 pm. Total off-loading of an Evening Event by the Vessel at the Slip shall be completed no later than 10:30 pm in order to comply with the noise restrictions imposed upon the CMC (the "Noise Restrictions"). In further compliance with the Noise Restrictions, no amplified music shall be played on the Vessel until the Vessel is at least 100 yards from the Slip, and upon the return of the Vessel to the Slip, all amplified music on the Vessel shall cease when the Vessel is within 100 yards of the Slip. Notwithstanding the foregoing, Licensee shall be prohibited from having parties or events within or at the Vessel at the Slip or on any other portion of the CMC dock. In cases of extreme weather, Vessel departure may be delayed by mutual agreement of the parties to insure the safety of its passengers.

Neither Licensee nor any of its patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents shall be permitted to access and/or participate in any other function at the CMC, i.e., "No party crashing allowed". No patron, customer, passenger, employee, crew, guest, invitee, visitor or agent of Licensee shall be permitted to loiter in the vicinity of the CMC prior to or after any of Licensee's Daily Tours or Evening Events. No patron, passenger, crew, vendor, guest, invitee, visitor or agent of Licensee shall be permitted to use the public restrooms at the CMC after 6pm Monday through Saturday and after 5pm on Sunday; provided no employee or crew of Licensee shall be permitted to use the public restrooms at the CMC after 6 pm on any day. The restrooms shall be available to Licensee's disabled patrons and passengers after 6pm if the CMC is open. No patron, customer, passenger, employee, crew, vendor, guest, invitee, visitor or agent shall be permitted to use the CMC shower or laundry facilities at any time as those facilities are for the use of transient boaters at CMC only. All vendors and employees of Licensee shall only load and unload using the driveway on the southern side of the CMC unless directed otherwise by a staff member of the CMC. Licensee shall also abide by the City's alcohol policy, marked as Schedule B, attached hereto and incorporated by reference herein.

6. **Security Personnel**

Licensors and Licensees acknowledge that the CMC is used as a venue for special events as well as an overnight transient marina and that coordination between Licensors and Licensees to minimize conflicts between their ventures are in the best interest of each party. In furtherance thereof, for any Daily Tour that is scheduled on the Vessel if a CMC event is scheduled to occur concurrently, Licensors shall require Licensees, at Licensee's sole expense to:

(a) Provide the necessary number of its security-trained staff to oversee the process of Licensee's patrons as they embark and debark from the CMC parking lot to the Vessel to maintain order and avoid any disruption to the CMC event.

(b) Provide all signage and directional props, such as stanchions, at the CMC in order to limit the area of the CMC in which Licensee's patrons shall be able to traverse to and from the Vessel.

(c) In the event the aforesaid security measures are inadequate in the opinion of Licensors, in its sole discretion, Licensors shall require Licensee, at Licensee's sole expense, to: Hire off-duty City of Charleston police officers ("Off-Duty CPD Officers") for any Daily Tour that is scheduled on the Vessel if a CMC event is scheduled to occur concurrently. The number of Off-Duty CPD Officers and times needed shall be determined by mutual agreement of only the CMC staff, consisting of the Operations Manager, the Assistant Operations Manager and Event Coordinator ("CMC Management") and Licensee; however, if CMC Management and Licensee are unable to mutually agree upon the number and times that Licensee must provide Off-Duty CPD Officers pursuant to this Section, the decision of CMC Management shall control.

(d) In the event a CMC event is scheduled to occur concurrently with a Daily Tour, it shall be the sole responsibility of Licensors to inform Licensee of upcoming daytime CMC events at least 1 week prior to any such CMC event occurring.

For any Evening Event that is scheduled on the Vessel if a CMC event is scheduled to occur concurrently, Licensors shall require Licensee, at Licensee's sole expense to:

(e) Hire off-duty City of Charleston police officers ("Off-Duty CPD Officers") for any Evening Event that is scheduled on the Vessel if a CMC event is scheduled to occur concurrently. The number of Off-Duty CPD Officers and times needed shall be determined by mutual agreement of only the CMC staff, consisting of the Operations Manager, the Assistant Operations Manager and Event Coordinator ("CMC Management") and Licensee; however, if CMC Management and Licensee are unable to mutually agree upon the number and times that Licensee must provide Off-Duty CPD Officers pursuant to this Section, the decision of CMC Management shall control.

(f) Within 10 days prior to an Evening Event, Licensee shall submit to Licensors the proposed type of group, including but not limited to a fraternity or a sorority, a proposed number of occupants of the Vessel that are expected for an Evening Event. Licensors shall determine the requisite number of Off-Duty CPD Officers Licensee must have for an Evening Event no later than 7 days before an Evening

Event. It is the sole responsibility of Licensee to inform the CMC of any upcoming Evening Event to ensure that enough notice is provided to procure the requisite number of Off-Duty CPD Officers for any Evening Event;

(g) Licensee, at its sole expense, shall also be required to have trained security personnel or mates with security training on board the Vessel at all times during a Daily Tour or Evening Event.

The responsibility of Licensee to hire Off-Duty CPD Officers as set forth herein is to ensure the CMC facility remains orderly and safe, and Licensor's guests and neighbors are protected from loud, unruly or unwanted contact by Licensee's patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents with others at CMC. Arrangements for Off-Duty CPD Officers shall be made by Licensee with the Charleston Police Department Professional Standards Office.

7. **Rules and Regulations.**

Licensee shall comply in all respects with the rules and regulations adopted by Licensor for CMC, which rules and regulations may be adopted, amended or revised by Licensor, in its sole discretion, from time to time upon notice to Licensee. In utilizing the Slip, Licensee agrees to and shall comply with all present and future applicable federal and state statutes and regulations, City of Charleston ordinances, resolutions, rules and regulations. In addition, Licensee shall comply with all health, safety, environmental, and sanitary regulations of all applicable governmental and regulatory bodies, including those regulations established by any federal, state or local government agency.

8. **Transfers and Assignments.**

Licensee's rights hereunder shall not be transferable or assignable. In addition, Licensee shall not sublet or assign the right to use the Slip.

9. **Insurance.**

Licensee shall maintain in force with insurance companies authorized to do business in the State of South Carolina a general liability policy with limits of at least \$1,000,000. This insurance shall cover liability arising from the conduct of the Licensee's business, including the operation of the Vessel, Daily Tours, Evening Events and other permitted uses as set forth herein at the CMC. Licensor shall be listed as an additional insured on Licensee's general liability policy. Licensee shall provide the Licensor with a certificate of insurance evidencing such coverage prior to the commencement of the Initial Term of this License agreement and thereafter during the Initial Term and any renewals thereof at the request of Licensor, in Licensor's sole discretion.

10. **Care of Slip and Vessel; Maintenance.**

Licensee shall keep and maintain the Slip and the Vessel in a clean and sanitary condition at all times and in accordance with any applicable laws enacted by any federal, state or local governmental entity, including the City of Charleston, and the rules and regulations of CMC as may be adopted or amended by the City of

Charleston from time to time. As a condition precedent to entering into this License Agreement, Licensee shall not sell or give away ice to any third party, including Licensee's employees, patrons, contractors, subcontractors or consultants, made by Licensee's ice machine at CMC. Upon termination of this License Agreement, Licensee shall surrender the Slip in good order and repair, other than normal wear and tear resulting from ordinary use. Under no circumstances, nor at any time, shall Licensee change, modify or alter the Slip or any portion thereof. Licensee shall not install or place any personal property, equipment, boxes or lockers of any type on, in or around the Slip or any other area of CMC without the prior written approval of Licensors; provided however, Licensors acknowledge and approve the use of a gangway by Licensee in a manner it deems appropriate for safe embarking onto and disembarking from the Vessel, which gangway may be left at the Slip during Daily Tours and Evening Events.

11. Utilities; Fees.

Electricity shall be available at the Slip and the Licensee shall be responsible for payment thereof which shall be included in its License Fee as set forth in Schedule A. Licensors shall make available to Licensee at the Slip such other utility services then available generally to other licensees at CMC. Licensors do not warrant the availability of utility services and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Without limiting the foregoing, Licensee acknowledges that water services may be discontinued during inclement weather. In addition, Licensors do not warrant that the utility services shall be compatible with the utility service requirements of the Vessel, including electrical interconnection requirements or the effect of electrolytic action.

12. Transient Moorage.

In the event Licensee causes the Vessel to be removed from the Slip for a period of two (2) or more consecutive days, then, in that event, Licensee shall notify Licensors of such fact prior to the Vessel's removal. Licensors do hereby specifically reserve the right to make use of the Slip during the period of such removal with or without advance notification by Licensors or Licensee.

13. Relocation of Vessels.

Licensee agrees that this License Agreement applies only to the Slip which Licensee acknowledges is of sufficient size for the Vessel. Licensors do hereby expressly reserve the right from time to time to assign a different Slip at the CMC for the Vessel which shall not alter the License Fee set forth in Schedule A. Licensee shall cause the Vessel to be removed to a different Slip immediately upon notice of such relocation at no cost to Licensors. Licensors also reserves the right to require Licensee to relocate the Vessel to another marina when directed by Licensors for special events, fishing tournaments, regattas, dredging, construction, etc. ("Special Events"). In the event Licensee is required to relocate its Vessel to another marina during a Special Event, Licensors shall reimburse Licensee for its reasonable out of pocket costs incurred to relocate and moor the Vessel within 60 days of the conclusion of the Special Event for which the Licensee was required to

incur relocation costs. If Licensee fails to relocate the Vessel pursuant to Licensor's instructions within forty-eight (48) hours of the time specified in Licensor's notice to Licensee, The Licensor may relocate the Vessel and Licensee may be charged a reasonable fee for relocating the Vessel, in Licensor's sole discretion. Licensee's sole and exclusive remedy, in the event the Vessel is relocated or Licensee receives a notice to relocate the Vessel, shall be to terminate this License Agreement upon ten (10) days written notice to Licensor; provided however, that CMC agrees that it shall not relocate Licensee's Vessel or require Licensee to vacate the Slip if such action would materially interfere with the ability of Licensee to carry out its business at the CMC except under circumstances where CMC has no other practical and reasonable alternative to accomplish such relocation. The determination of an alternative as 'practical and reasonable' shall be at Licensor's sole discretion.

14. Access to Vessels.

Licensor shall have the right from time to time to board the Vessel when moored at the Slip to determine if the Vessel is in compliance with the terms of this License Agreement, including the rules and regulations of CMC. Licensor acknowledges that the Vessel is a USCG regulated vessel and subject to Homeland Security Regulations requiring a company representative holding a TWIC card to accompany Licensor when boarding the Vessel.

15. No Living Aboard.

No person shall live aboard the Vessel when moored at the Slip without the prior written consent of Licensor, which Licensor may withhold at its sole discretion. Persons authorized to live aboard the Vessel must execute a separate Live-aboard Agreement with Licensor. A person shall be deemed living aboard the Vessel if such person occupies the Vessel in excess of ninety-six (96) hours over a two-week consecutive period.

16. No Warranties.

Licensor makes no warranties, express or implied, as to the condition of the Slip or CMC, including floats, walkways, gangways, ramps, gear and related items, or the suitability of the Slip or CMC for its intended purposes. Licensee acknowledges that Licensee has had an opportunity to inspect CMC and the Slip prior to execution of this License Agreement and agrees to accept CMC and the Slip in its current "AS IS" condition.

17. Notices.

Any notice by Licensor to Licensee hereunder shall be deemed to be given if and when it is personally delivered to Licensee or deposited in the mail and addressed to Licensee at PO Box 21360, Charleston, South Carolina. Licensee is responsible for informing Licensor of its most current address and phone number(s). Any notice by Licensee to Licensor shall be deemed to be given if it is signed by Licensee and deposited in the mail and addressed to Licensor at the address where Licensee's monthly license fees are paid pursuant to this License Agreement. In addition, any written notice or communication to Licensor shall be delivered or

deposited in the mail to Cam Patterson, Director of Special Facilities at #2 George Street, Charleston, South Carolina 29401 or emailed to Cam Patterson, Director of Special Facilities at pattersonc@charleston-sc.gov.

18. Removal of Vessel in Emergency.

In case of emergency, The Licensor is authorized to relocate the Vessel or take such protective action as it deems necessary without liability for damages or loss of any kind to Licensee. Licensee agrees that The City is under no obligation or duty to take emergency action. Licensee agrees to pay the Licensor reasonable compensation for moving the Vessel or taking precautionary measures under such circumstances.

19. Default, Remedies.

If Licensee violates any provision of this License Agreement following written notice from Licensor to cease and desist such violation, or if Licensee fails to pay monthly license fees, electricity charges, marina or gas charges or any other amount due hereunder and such failure continues for a period of fifteen (15) days after Licensor has given Licensee written notice thereof, or if Licensee fails to perform any other term, covenant or condition of this License Agreement and such failure continues for a period of fifteen (15) days after Licensor has given Licensee written notice thereof, Licensee shall be in default hereunder. In the event of a default, Licensor may exercise any and all remedies available to it hereunder or as otherwise provided by law. Without limiting the foregoing in the event of a default, Licensor may immediately terminate this License Agreement without limiting the liability of Licensee for all amounts due hereunder. Upon termination of this License Agreement and if Licensee has not already done so, Licensor shall be authorized to remove the Vessel and all property of Licensee from the Slip and CMC, all at the cost, expense and risk of Licensee.

20. Cumulative Remedies, No Waiver.

Licensor's rights and remedies hereunder are cumulative in nature, and pursuit of any particular remedy by Licensor shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available at law. No waiver or forbearance of a default of this License Agreement by Licensor shall be construed as a waiver or forbearance of any other or subsequent breach by Licensee, and the acceptance of any performance hereunder or the payment of any amount after the same has become due or at a time when any other default exists shall not constitute a waiver by Licensor of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.

21. Termination.

At no cost to Licensor, Licensor may terminate this License Agreement as of the end of any month of the Initial Term or any extension thereof by providing Licensee with written notice thereof at least sixty (60) days prior to the end of the month if the CMC is damaged, destroyed, or conditions exist within or adjacent to the CMC,

whether on the water or land, which impair Licensor's ability to carry out its obligations hereunder.

22. Lien for Fees and Services.

Licensor shall have and Licensee shall hereby grant and convey to Licensor a lien and security interest in the Vessel and in all property of Licensee on or at the Vessel or CMC to secure the performance by Licensee of the terms and conditions of this License Agreement, including the securing of the payment by Licensee of all services and supplies provided by Licensor to Licensee or on behalf of the Vessel and in furtherance of this License Agreement, as well as all fees due to Licensor by Licensee. Notwithstanding termination of this License Agreement, Licensor shall be fully authorized to hold the Vessel and her tackle, apparel and appurtenances and sell the same in accordance with applicable law in the event Licensee fails to perform the terms and conditions of this License Agreement or fails to pay for fees, services and supplies in accordance with this License Agreement.

23. Indemnity.

Licensor shall not be liable to Licensee or any other person for any loss, injury, death or damage to persons or property, including the Vessel, which may arise at the Slip or at the CMC. Licensee agrees to indemnify, defend and hold Licensor harmless from and against all loss, cost, liability, damage and expense, including but not limited to reasonable attorney's fees, penalties and expenses, incurred in connection with or arising from (i) any default by Licensee of the terms and conditions of this License Agreement, (ii) negligent acts, whether by commission or omission of Licensee or its patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents; or (iii) any claim by any other person for loss, injury, death, or damage to person or property brought about by reason of Licensee's default of the terms of this License Agreement or by reason of a negligent act, whether by commission or omission of Licensee or its patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents. Licensee acknowledges that the Vessel and all personal property of Licensee are moored at the Slip at Licensee's sole risk, and Licensor shall not be liable for any loss or damage thereto. Nothing herein shall be construed as any assumption by the Licensee of any responsibility of indemnification to Licensor or any other person arising out of the design or physical condition of the CMC or its appurtenances unless same are caused by the negligence of Licensee or its patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents.

24. Silting and Adequacy of Water Levels.

In the event the Slip is not reasonably usable by Licensee due to silting, Licensee's sole and exclusive remedy shall be to terminate this License Agreement upon thirty (30) days' written notice to Licensor; provided Licensor does not remedy such condition within such thirty (30) day period. Licensor makes no representation regarding the adequacy of water levels in or adjacent to CMC and assumes no responsibility for damage resulting directly or indirectly from water levels.

25. Licensee's Responsibility for Damage and the Environment.

Licensee shall be responsible for and shall promptly, upon demand, pay Licensor for any damage caused to CMC, adjacent waters or governmental property by Licensee, the Vessel, its patrons, customers, passengers, employees, crew, vendors, guests, invitees, visitors or agents. Licensee shall comply with all laws and regulations now or hereafter in effect concerning the protection of the environment in and around CMC, pay Licensor for any damage, expense or liability incurred by Licensor due to Licensee's failure to comply with such laws and regulations or due to any pollution created by, caused by or contributed to by Licensee.

26. Joint and Several Liability.

If more than one person executes this License Agreement as Licensee, their obligations are joint and several, and any act or signature of or notice or refund to any one or more of them with respect to this License Agreement shall be fully binding upon each of them.

27. Attorneys Fees.

In the event that any action or other legal proceeding is brought by Licensor to enforce any provision of this License Agreement, the Licensor shall be entitled to recover all costs plus reasonable attorney's fees from Licensee (including proceedings on appeal or in mediation).

28. Governing Laws and Venue.

This License Agreement shall be governed by the laws of the State of South Carolina and the United States. The venue of any suit arising out of or related to this License Agreement shall be in Charleston County Court of Common Pleas, South Carolina.

29. Severability.

If any provision of this License Agreement shall be found to be void, such determination shall not affect any other provision of this License Agreement.

**LICENSOR:
THE CITY OF CHARLESTON**

WITNESSES:

By: John J. Tecklenburg

Its: Mayor

Date: _____

**LICENSEE:
TOUR MANAGEMENT
SERVICES, INC.**

WITNESSES:

Carolene C. May

Robert Scribner

By: Robert Scribner

Its: President

Date: 7/7/2016

Lucille H. Scribner

By: Lucy Scribner

Its: Vice-President

Date: 7/7/16

SCHEDULE A

1. **License Fee.**

Licensee shall pay the sum of \$53,080.00 per year to the Licensor during the Initial Term which includes the following annual amounts:

a.	License Fee	\$30,500.00
b.	Dockage	10,740.00 ^[AA1]
c.	Dumpster Fee	1,200.00
d.	Electricity	840.00
e.	Evening Events	9,800.00 ^[AA2]

The License Fee in the amount of \$58,080.00 shall be due and payable in full to Licensor either at the commencement of the Initial Term or monthly ^[AA3] in the amount of \$4,423.33 which shall be due and payable to Licensor on the first day of the month during the Initial Term, commencing on _____, 2016 (the "License Fee"). Licensee shall be allowed to deduct the amount of \$100.00 for each day and \$50.00 for each evening that the Licensor requires the Vessel to be removed from the Slip due to, including but not limited to, hurricane damage, severe flooding or other catastrophic events.

The License Fee shall exclude fuel fees and parking fees, if parking fees at CMC's parking lot are charged by Licensor.

In the event Licensee fails to pay the License Fee within 30 (thirty) days after it is due, this License Agreement may be immediately terminated at no cost to Licensor.

Upon the expiration of the Initial Term and during any renewal period thereof, the License Fee due from Licensee to Licensor shall be increased by 3% per annum.

2. **Exclusive Purchase of Gas by Licensee at CMC.**

Licensee agrees to purchase all of its fuel for the Vessel from Licensor at CMC at the prevailing rates charged by Licensor less a ten (\$.10) cents per gallon discount, which shall be due and payable within 30 (thirty) days of the postmark on any such invoice from Licensor to Licensee.

3. **Parking.**

Only Licensee, its employees, crew, passengers, guests, invitees, visitors, vendors or agents of the Vessel shall be permitted to park at CMC on a first-come, first-serve basis with the general public at prevailing City parking rates, if any. Parking shall be limited to no more than 3 hours per day per vehicle. No employee, crew,

passenger, guest, invitee, visitor, vendor or agent of any other vessel owned or leased by Licensee other than the Vessel shall be permitted to park at CMC in accordance with the terms herein.

4. **Dumpster.**

All trash generated by Licensee's operations shall be properly disposed of inside of the dumpster at CMC, not in trash cans or in the lock-up area around the dumpster. In the event the dumpster is full, trash must be removed to another location away from CMC at the sole expense of Licensee.

Schedule B

Alcohol Policy

1. Alcohol shall only be served on the Vessel by alcohol-certified and fully-insured bartenders, to any individual listed in Section 3 below who has been issued and is wearing a wristband.
2. Alcohol permits shall be the responsibility of Licensee.
3. Security hired by Licensee shall check IDs and only issue wristbands to Licensee's patrons, customers, passengers, vendors, guests, invitees, visitors or agents who are at least 21 years of age or older.
4. Licensee shall place clearly marked signs on the Vessel advising all patrons, customers, passengers, vendors, guests, invitees, visitors or agents that "No alcohol shall be removed from the Vessel".
5. A staff member of Licensee shall be stationed at the exit of the Vessel to ensure that no alcohol is removed from the Vessel.
6. Licensee shall place trash receptacles at the exit of the Vessel at Licensee's sole cost and expense.
7. Alcohol sales shall terminate 30 minutes prior to anyone disembarking the Vessel at the CMC in accordance with the terms herein.
8. No person on the Vessel shall be served more than 2 drinks per person per sale.
9. Licensee and its crew/staff shall adhere to the laws of the State of South Carolina governing the sale and dispensing of alcoholic beverages, including liquor, beer or wine, to any person 21 years of age or older or under the age of 21 or knowingly allow a person under the age of 21 to consume an alcoholic beverage while on or around the Vessel.

C.

REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: June 19, 2016

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: Fort Johnson Road

TMS: 428-00-00-013, 428-00-00-040

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request approval for the Mayor to execute the attached Memorandum of Understanding between First Baptist Church Foundation and the City whereby First Baptist will construct a road on a portion of the City's property at no cost to the City.

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Adelaide J Andrews by FE</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
	_____	<input type="checkbox"/>

FUNDING: Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?* Yes ☐ No ☐

*If approved, provide the following: Dept/Div. _____ Acct: _____

Balance in Account _____ Amount needed for this item _____

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.

COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: July 19, 2016

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: Fort Johnson Road

TMS: 428-00-00-013, 428-00-00-040

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request approval for the Mayor to execute the attached Memorandum of Understanding between First Baptist Church Foundation and the City whereby First Baptist will construct a road on a portion of the City's property at no cost to the City.

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

ACTION: What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) _____ Purchaser _____

☐ **DONATION/TRANSFER**
Donated By: _____

☐ **FORECLOSURE**
Terms: _____

☐ **PURCHASE**
Terms: _____

☐ **CONDEMNATION**
Terms: _____

☐ **OTHER**
Terms: _____

☐ **SALE** Seller (Property Owner) _____ Purchaser _____

☐ **NON-PROFIT ORG, please name** _____
Terms: _____

☐ **OTHER**
Terms: _____

☐ **EASEMENT** Grantor (Property Owner) _____ Grantee _____

☐ **PERMANENT** _____

COMMERCIAL REAL ESTATE FORM

Terms: _____

☐

TEMPORARY

Terms: _____

☐

LEASE

Lessor: _____

Lessee: _____

☐

INITIAL

Terms: _____

☐

RENEWAL

Terms: _____

☐

AMENDMENT

Terms: _____

☒

Improvement of Property

Owner: _____

City of Charleston

At closing, First Baptist Church Foundation shall pay to the City \$100,000 to be used by the City to improve parking on the City Tract.

In accordance with a July 14, 1999 Joint Use and Easement Agreement between the parties, First Baptist Church Foundation agreed to upgrade the existing Common Road to meet City standards for a public street to be dedicated to the City. During construction, the City shall have use of one of First Baptist's fields at their George Griffith campus.

The Church shall create a temporary access for vehicles and pedestrians to allow access to the soccer fields during construction at no cost to the City.

Terms: _____

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes

☐

No

☐

N/A

☒

Results: _____

Signature: _____

Colleen Carducci

Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

STATE OF SOUTH CAROLINA)
)
CITY OF CHARLESTON)
)
COUNTY OF CHARLESTON)

MEMORANDUM
OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum" or "Agreement") is entered into this ____ day of _____, 2016, by and between FIRST BAPTIST CHURCH FOUNDATION ("Church") and CITY OF CHARLESTON ("City").

WITNESSETH:

WHEREAS, Church is the owner of a parcel of land known as "Part D Bay View Farm" (TMS No. 428-00-00-013), containing 30.997 acres in Plat Book ED-293, attached as **Exhibit A**, plus a 0.62 acre parcel that has been added to the Church Tract, Plat Book EG-165, attached as **Exhibit B** (collectively "Church Tract"); and

WHEREAS, City is the owner of a parcel of land known as "Tract A" (TMS No. 428-00-00-040, containing 36 acres ("City Tract"), a copy of the plat of City Tract, Plat Book EA-96, is attached as **Exhibit C**; and

WHEREAS, City Tract is subject to that certain Joint Use and Easement Agreement dated July 14, 1999, by and among First Baptist Church, City of Charleston, and James Island Youth Soccer Association a/k/a James Island Youth Soccer Club, Inc. ("JIYSC"), which was recorded April 17, 2001, in Book C-369, Page 190 in the RMC Office for Charleston County, South Carolina ("Joint Use Agreement"); and

WHEREAS, the Joint Use Agreement, among other things, provided for a Common Road Easement twenty-five (25') feet in width across City Tract for the benefit of the Church to provide vehicular access to Fort Johnson Road. In addition, the Joint Use Agreement specifically provided in Paragraph 7:

7. UPGRADE OF COMMON ROAD. In the event First Baptist shall subdivide any of its property and shall transfer the same to a third party and the Common Road is used for the primary ingress and egress to the subdivided and conveyed property, it agrees that it shall cause the Common Road to be constructed or upgraded at it or its assigned sole expense to meet City standards for a public street and to dedicate the same to City of Charleston.

and

WHEREAS, Church wishes to place the Church Tract on the market for sale to a subdivision developer and wishes to enter into this Agreement with City as to the obligations of Church to construct the Upgrade of Common Road ("New Road") as provided herein, which obligations Church shall have the right to assign to a purchaser from Church as hereinafter provided; and

WHEREAS, City Tract is subject to that certain Lease between City of Charleston and James Island Youth Soccer Club dated March 20, 1998, and recorded April 20, 1998, in Book E-301, Page 101, in the RMC Office for Charleston County, South Carolina and the Church and City wish to agree upon parking improvements to City Tract that shall benefit the users of City Tract; and

WHEREAS, the parties hereto agree that each of the promises, covenants and obligations hereafter set forth are necessary for the development of each tract of land of the Church Tract and City Tract; and

WHEREAS, the parties hereto are entering into this Memorandum in order to set forth the mutual obligations one to the other to accomplish the foregoing.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT, for and in consideration of the foregoing premises and the mutual promises made one to the other, Church and City agree as follows:

1. The recitals above are incorporated into this Agreement.
2. Church shall have the right to assign its obligations under this Agreement at Closing of the sale of the Church tract to a purchaser ("Purchaser") and agrees to require Purchaser, as assignee of this Agreement, to abide by and perform all obligations of Church under this Agreement (the "Closing"). Notwithstanding anything contained herein to the contrary, other than City agreeing to assist the Church with processing the Concept Plan, Road Plan and Preliminary Plat for approval as provided in Paragraphs 4 and 5, respectively, City's obligations under this Agreement are contingent on Purchaser agreeing at Closing to perform all of the obligations of the Purchaser under this Agreement. City's consent to the assignment shall not be unreasonably withheld, conditioned or delayed. Closing shall not occur until City has approved the Concept Plan, Road Plan, and Preliminary Plat and City Council has approved all easements as hereinafter provided.
3. In accordance with the terms of this Agreement, including Section 13 below, at Closing City shall grant a temporary access easement and temporary construction easement over City Tract for the Purchaser to build the "Proposed Road (60' R/W)" and "Proposed Road (50' R/W)" located on City Tract, as well as a temporary easement over a portion of City Tract shown as "Former Ingress/Egress Access Easement, Plat Book ED, Page 293 Extinguished By This Plat" on a Preliminary Plat by HGBD A Bell Company, dated September 10, 2014, which consists of five pages attached hereto as **Exhibit D-1 through D-5** ("Preliminary Plat"). Sheet 2 of 5 (D-2) of the Preliminary Plat shows the portion of "Proposed Road (60' R/W)" and "Proposed Road (50' R/W)" running from Fort Johnson Road to where it shall intersect with the property owned by Church. Sheet 3 of 5 (D-3) shows the area of the easement designated as "Former Ingress/Egress Access Easement, Plat Book ED, Page 293 Extinguished By This Plat." The New Road to be built and dedicated by Purchaser is shown on **Exhibit D-1** as "New Public Right of Way, 2.996

acres/130,493 sq. ft.” The temporary access easement and the temporary construction easement shall provide that the Common Road shall not be closed until Church has obtained all necessary permits to construct the New Road and has issued a Notice to Proceed to the contractor who is under contract to construct the New Road. Church, within 30 days prior to Closing, shall provide City with a New Road construction schedule to include the date when construction shall commence and the date when construction of the New Road shall be completed.

4. Prior to Closing, Church shall formally submit the Concept Plan to the Technical Review Committee (“TRC”) and the City Planning Commission for approval. Church shall be responsible for all costs for the approval of the Concept Plan. This Concept Plan shall also show certain areas to be conveyed to City, the location of a sign easement, which shall be determined by the City in the City’s sole discretion, and as provided in Section 17 herein, and other boundary line adjustments as hereinafter provided.
5. After approval of the Concept Plan by the Planning Commission and TRC, and Church, having obtained any required variances, shall submit to TRC for approval, a road construction plan (“Road Plan”) (**Exhibit Ex-001**) to show in detail, the construction of the New Road, landscaping and permanent fencing, as set forth in Section 6 herein, sidewalks, signage and safety devices to be installed as a part of the New Road. Additionally, Church shall submit to City for approval a temporary access plan for maintenance vehicles and pedestrian access to allow City and JIYSC access into their soccer field areas, all of which shall be at no cost to City or JIYSC. Within 60 days prior to commencement of construction of the New Road, Church or Purchaser, as applicable, shall notify City and JIYSC in writing of the date on which construction of the New Road shall begin, with the understanding that Church or Purchaser, as applicable, shall use its best efforts to continue construction thereafter until its completion. Construction of the New Road shall not commence until the temporary access road, temporary parking, and security fencing have been installed, or have been completed. Construction of the New Road shall not occur on November 19 and 20, 2016. If it appears that the dedication of the New Road shall not be complete by November 18-19, 2017, Purchaser shall give JIYSC sixty (60) days’ prior written notice so JIYSC can make other plans for the tournament to be held on those two days.
6. At the time of dedication of the New Road, Church shall convey to City the “Flagpole Portion” of the Church’s property shown on the Preliminary Plat running from Fort Johnson Road to the terminus at the “Proposed Road (50’ R/W”) as shown on **Exhibit D-2 in the same condition as it was in prior to construction of the New Road at no cost to the City**. This area is approximately 0.58 acres (the “Flagpole”) and shall be conveyed to City without consideration. City anticipates allowing JIYSC to use the Flagpole for parking after completion of the New Road as described herein. At Closing and subject to the requirements set forth in Section 3 herein, City shall grant a temporary access easement and temporary construction easement to Church over the New Road in order to construct the New Road and have access to the Church Tract. Said temporary access easement and

temporary construction easement shall be for a term of one (1) year from the date of issuance of all construction permits and Church's issuance of Notice to Proceed to its contractor to construct the New Road.

7. At Closing, Church shall convey to City, without consideration, the area shown as "Additional Joint Use Easement Between City of Charleston and First Baptist Church of Charleston, SC, per Plat EG, Page 165, Extinguished By This Plat", as shown on **Exhibit D-3** and to be made a part of TMS #428-00-00-040, City and Church shall obtain a release from JIYSC for access and use of this area as contained in the Joint Use Agreement. As evidenced by the consent of JIYSC to this MOU, City and Church have obtained the consent of JIYSC to amend the Joint Use Agreement and the Lease, as applicable, for access to be upon the temporary road and parking areas, to restrict any access or parking on the New Road while under construction and thereafter, to release that portion of the JIYSC's leased premises, if applicable, which are included in the New Road. At Closing, City shall grant a temporary easement to Church for the area as shown on **Exhibit D-3** as "Former Ingress/Egress Access Easement" for construction of part of the New Road which shall also be subject to the requirements set forth in Section 3 herein. At commencement of construction of the New Road, Church shall make available at no cost (or lease for nominal consideration) to the City the athletic field located at First Baptist Athletic Complex on George Griffith Boulevard as shown on Exhibit F (the "Church Athletic Field") for use until dedication of the New Road. During City's use of the Church Athletic Field, the Church shall be responsible for maintaining same at no cost to City with the exception of painting the Church Athletic Field for recreational use which shall be the responsibility of the City at no cost to the Church.
8. Church agrees to convey to City fee simple title, by limited warranty deed (Deed) free and clear of any and all liens and encumbrances, unless otherwise provided herein, in and to the areas to be transferred per Section 6 and 7 above.
9. At Closing, Church and City, as a part of the construction of New Road, shall grant a five-foot (5') utility easement for SCE&G that must fit within the 60' and 50' R/W of the New Road. The SCE&G Easement Agreement shall be on a form approved by City Engineer and Corporation Counsel, such approval not to be unreasonably withheld.
10. At Closing, City shall grant to Church an easement for storm water drainage into City's existing drainage ponds on City Tract so long as Church's engineer certifies that the drainage shall not negatively impact the existing park on City Tract and subject to approval by City Engineer. The Drainage Easement Agreement shall be in the form approved by City Engineer and Corporation Counsel such approval not to be unreasonably withheld.
11. As a condition precedent to Church acquiring any easement from City as set forth in this Agreement, Church agrees to indemnify and hold harmless City from any liability arising out of any of the easements to be granted pursuant to the terms

herein, including but not limited to the payment of all claims, losses, damages, judgments, costs or attorney's fees arising out of Church's use of any of the City Tract or any of the easements set forth herein by Church, its contractors, invitees and employees arising out of the construction by Church. Further, Church agrees to maintain public liability insurance coverage insuring Church for its activities on the City Tract and the easements set forth herein in an amount acceptable to City and shall name City as an additional insured thereon.

12. Along with the Preliminary Plat set forth in Paragraph 3, Church shall submit to City its construction plans, including safety fencing incorporating a durable chain-link fence material and construction security, and plans for any temporary easements needed for construction of the New Road, which shall all be subject to the approval of City. Construction plans shall take into consideration the provision of access to the soccer fields and parking during construction and the plan shall require approval of City's Director of Recreation, which shall not be unreasonably withheld, conditioned or delayed. City and Church shall cooperate in providing temporary construction access for Church. At no cost to City, Church agrees to provide City with alternative access during construction to the soccer fields and the parking areas being developed on City Tract by creating and maintaining an alternative temporary access road. Attached as **Exhibit Ex-002** is a drawing showing the location, as approved by this Agreement, of a new temporary road and parking areas and fencing for security purposes in the area. Additionally, at no cost to City, Church shall remove the temporary access road and restore the site and return it to the same condition as it was in prior to the temporary access being installed. Parking on the New Road and the Temporary Road shall be prohibited during construction. Once the New Road and parking areas are constructed and available for use by the City, JIYSC and the public, City shall release its rights for access over the Common Road.
13. Upon completion of construction of the New Road, both the Purchaser and City shall diligently pursue and join in the dedication of the New Road. At the time the New Road is dedicated, the entire New Road shall be designated as a "No Parking Area" with City signage denoting same with Church being responsible for the cost of such signage as well as any new signage required as set forth in this MOU. City shall enforce the parking prohibition on the New Road.
14. At Closing, Church shall pay to City, One Hundred Thousand and No/100 (\$100,000.00) Dollars to be used by City to improve parking on City Tract, subject to the following terms and conditions:
 - a. If Closing has not occurred within one year from the date of this Memorandum, Church shall owe a three (3%) percent escalator per annum to the \$100,000.00 if the Closing occurs in the second, third, fourth or fifth year from the date of this Memorandum. If the Closing does not occur within five years from the date of this Memorandum, all agreements herein shall terminate and be of no further force and effect.

- b. Prior to completion of the New Road, City shall complete and furnish to Church its plans for parking improvements on City Tract. All parking improvements and related safety improvements ("Parking Improvements") that City can make with the use of the \$100,000.00 shall be completed within one year following the completion and dedication of the New Road ("City Construction Period").
 - c. **Parking** on, in, or alongside the New Road shall be prohibited during the time of construction of the New Road from the date of issuance of the construction permit and subject to the requirements set forth in Section 3. City shall inform JIYSC and other users of City Tract of the parking prohibitions during construction of the New Road, as well as the prohibition of parking after dedication of the New Road.
 - d. The \$100,000 must be used to establish the designated off-street parking on City Tract, the Flagpole and the property conveyed to City by Church as set forth in Sections 6 and 7 herein for the benefit of City and the funds can be used for no other purpose.
- 15. At Closing, Church shall have the right to assign its rights and obligations under this Agreement to Purchaser and Purchaser shall agree with City to become obligated to abide by the terms and conditions of this Agreement and to fulfill all of the obligations of Church as provided herein. Upon the assignment by Church to Purchaser, City shall look solely to Purchaser to fulfill the obligations arising from and after the date of the closing.
 - 16. A condition precedent to any obligation of either party under this Agreement is the sale and conveyance of the Church Tract to a Purchaser that intends to subdivide the Church Tract for use as a single family residential development as allowed under the current zoning classification of R-2 and abide by the terms of this Agreement.
 - 17. At Closing, City shall grant a sign easement in the area shown on the approved Preliminary Plat and as approved by City Council. Further, Church shall be responsible to build the sign in accordance with applicable City ordinances and as approved by DRC. Church further agrees that the sign shall include signage identifying the single family residential development and both City's soccer complex and JIYSC's soccer fields. The sign shall be at no cost to City and JIYSC. Church shall be responsible for the maintenance and related costs of the sign.
 - 18. At the time the New Road is dedicated to City, Church and City, along with JIYSC, shall terminate the Joint Use Agreement as recorded in Book C-369, Page 190, in the RMC Office for Charleston County, South Carolina.
 - 19. All requirements to be performed prior to, at and after Closing as set forth herein, shall be at no cost to City except for items which are City obligations as set forth in this Agreement.

20. This Memorandum shall be binding upon and inure to the benefit of each party, and their successors and assigns. This Memorandum contains the parties' entire agreement regarding the New Road. This Memorandum shall not be amended or modified except in writing and signed by all parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have hereunto executed this Memorandum on the date and year first above written.

WITNESSES:

FIRST BAPTIST CHURCH FOUNDATION

[Signature]
Witness #1
[Signature]
Witness #2 / Can be Notary

By: [Signature]
Name: R. Marshall Blalock - Board Member
Its: Authorized agent for the Board

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

PERSONALLY APPEARED before me First Baptist Church Foundation, by R. Marshall Blalock, its Authorized agent, who provided satisfactory evidence of identification to be the person whose name is subscribed to the foregoing instrument, and further acknowledged before me execution of the foregoing instrument.

SWORN TO and subscribed before me this 8 day of July, 2016.

[Signature]
Notary Public for South Carolina
Printed Name J. Sidney Ruone
My commission expires 11-19-22

WITNESSES:

CITY OF CHARLESTON

Witness #1

By: _____
Name: _____
Its: _____

Witness #2 / Can be Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

PERSONALLY APPEARED before me City of Charleston, by _____,
its _____, who provided satisfactory evidence of identification to be the person
whose name is subscribed to the foregoing instrument, and further acknowledged before me
execution of the foregoing instrument.

SWORN TO and subscribed before me this _____ day of _____, 2016.

Notary Public for South Carolina
Printed Name _____
My commission expires _____

CONSENT OF JAMES ISLAND YOUTH SOCCER CLUB:

By: _____

Its: _____

Charles J. Smith
Vice President

TABLE OF EXHIBITS

to
Memorandum of Understanding

Between
First Baptist Church Foundation and City of Charleston

Exhibit A	Plat recorded at ED-293
Exhibit B	Plat recorded at EG-165
Exhibit C	Plat recorded at EA-96
Exhibit D1-D5	Preliminary Plat
Exhibit E 001	Final Roadway Improvement Plan
Exhibit E 002	Temporary Access & Construction Safety Plan
Exhibit F	Church Athletic Field

LOCATED ON JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA

Southeastern Surveying, Inc.

[illegible][illegible]

I HONESTLY BELIEVE THE NEW 400 GRAMMIZ
EQUIVALENT TO THE LINE OF THE PUBLIC FOREVER.

W. Lindsay Gould

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE ENACTED ABOVE NARRATIVE WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE WISCONSIN STATUTES MAKING FOR THE PRACTICE OF LAW, AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE WISCONSIN STATUTES MAKING FOR THE PRACTICE OF LAW, AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE WISCONSIN STATUTES MAKING FOR THE PRACTICE OF LAW.

John L. Burke
 JOHN L. BURKE, JR.
 REC. FILE NO. 18113

U K 3307004

[illegible][illegible]

REFERENCE	PAGE
PLAT BOON	124
AF	90
S	63
22	70
27	18
28	171
29	162
30	72
31	181
32	190
33	15
34	13
35	8
36	76
37	144
38	300
39	371
40	433
41	90

GRAPHIC SCALE

1 INCH = 500 FEET

LEGEND

0	1/2" RESIN KIN
4	TRON AVE. O.D.
4	WALLER POINT, NO CORNER SET
24	WALSH
24	EMERSON AND OCEAN, RELIGIOUS
24	MANAGEMENT ACT (CITY) THE

NO.	DATE	DESCRIPTION
1	1/20/01	100 PLOT BATTERY ROAD CORNER
2		
3		
4		
5		
6		
7		

Southeastern Surveying
 147 Hapgood Creek Drive - Suite 102
 Charleston, South Carolina 29412
 843-795-3300 FAX 795-2007 www.ses.com

A BOUNDARY LINE AND LEASE LINE ADJUSTMENT PLAT OF
 LANDS OWNED BY THE CITY OF CHARLESTON AND
 FIRST BAPTIST CHURCH OF S.C.
 LOCATED ON JAMES ISLAND
 CITY OF CHARLESTON
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE: JULY 23, 2001
DRAWN BY: [Signature]
CHECKED BY: [Signature]
DATE: 09/03/01
SCALE: 1" = 100'

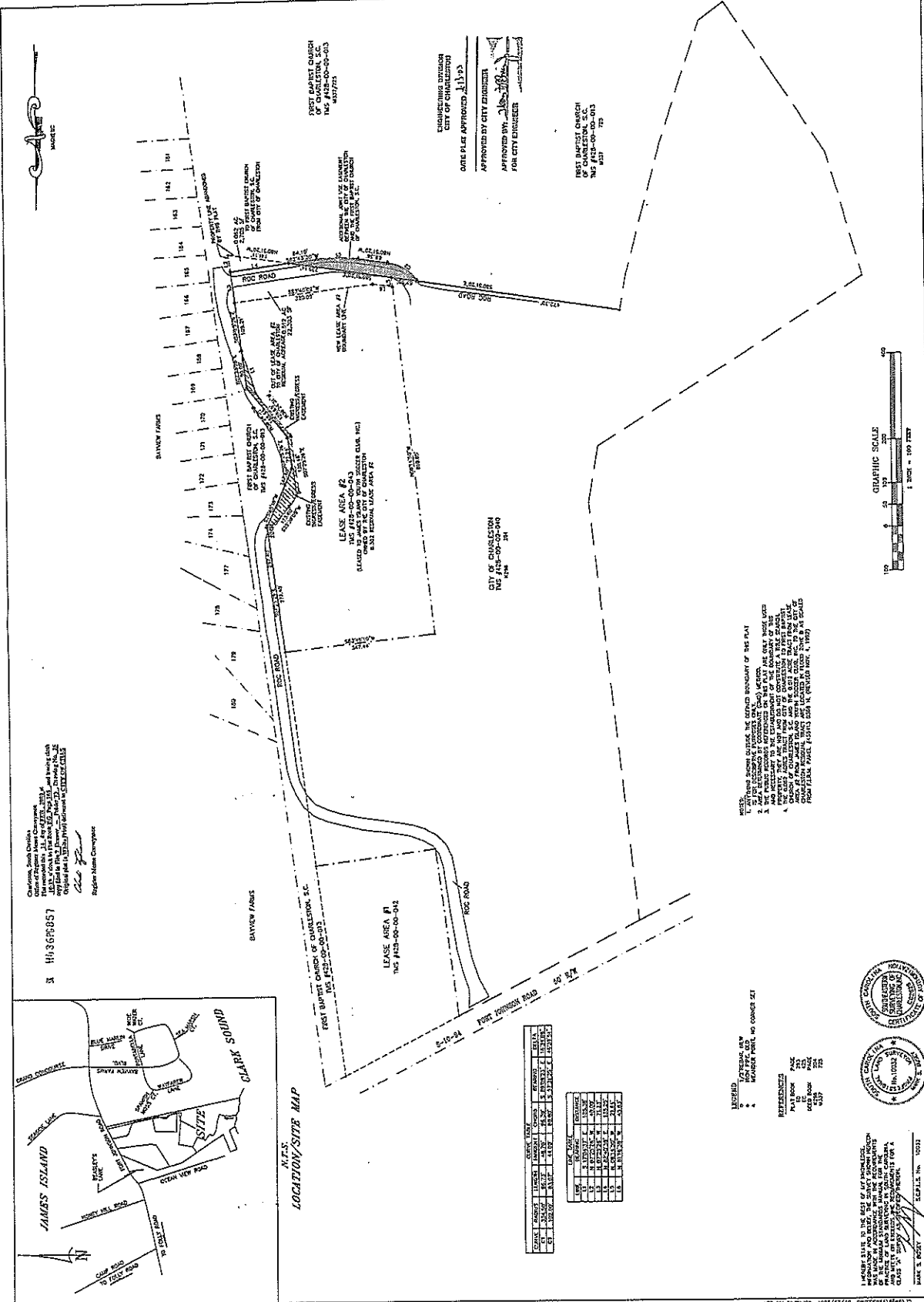
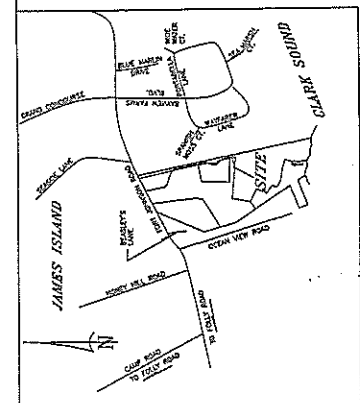


EXHIBIT B
 EG-165



LINE	BEARING	DISTANCE	AREA
1	N 89° 00' 00" E	100.00	100.00
2	S 89° 00' 00" E	100.00	100.00
3	S 89° 00' 00" E	100.00	100.00
4	N 89° 00' 00" E	100.00	100.00
5	N 89° 00' 00" E	100.00	100.00
6	N 89° 00' 00" E	100.00	100.00
7	N 89° 00' 00" E	100.00	100.00
8	N 89° 00' 00" E	100.00	100.00
9	N 89° 00' 00" E	100.00	100.00
10	N 89° 00' 00" E	100.00	100.00
11	N 89° 00' 00" E	100.00	100.00
12	N 89° 00' 00" E	100.00	100.00
13	N 89° 00' 00" E	100.00	100.00
14	N 89° 00' 00" E	100.00	100.00
15	N 89° 00' 00" E	100.00	100.00
16	N 89° 00' 00" E	100.00	100.00
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18	N 89° 00' 00" E	100.00	100.00
19	N 89° 00' 00" E	100.00	100.00
20	N 89° 00' 00" E	100.00	100.00
21	N 89° 00' 00" E	100.00	100.00
22	N 89° 00' 00" E	100.00	100.00
23	N 89° 00' 00" E	100.00	100.00
24	N 89° 00' 00" E	100.00	100.00
25	N 89° 00' 00" E	100.00	100.00
26	N 89° 00' 00" E	100.00	100.00
27	N 89° 00' 00" E	100.00	100.00
28	N 89° 00' 00" E	100.00	100.00
29	N 89° 00' 00" E	100.00	100.00
30	N 89° 00' 00" E	100.00	100.00
31	N 89° 00' 00" E	100.00	100.00
32	N 89° 00' 00" E	100.00	100.00
33	N 89° 00' 00" E	100.00	100.00
34	N 89° 00' 00" E	100.00	100.00
35	N 89° 00' 00" E	100.00	100.00
36	N 89° 00' 00" E	100.00	100.00
37	N 89° 00' 00" E	100.00	100.00
38	N 89° 00' 00" E	100.00	100.00
39	N 89° 00' 00" E	100.00	100.00
40	N 89° 00' 00" E	100.00	100.00
41	N 89° 00' 00" E	100.00	100.00
42	N 89° 00' 00" E	100.00	100.00
43	N 89° 00' 00" E	100.00	100.00
44	N 89° 00' 00" E	100.00	100.00
45	N 89° 00' 00" E	100.00	100.00
46	N 89° 00' 00" E	100.00	100.00
47	N 89° 00' 00" E	100.00	100.00
48	N 89° 00' 00" E	100.00	100.00
49	N 89° 00' 00" E	100.00	100.00
50	N 89° 00' 00" E	100.00	100.00
51	N 89° 00' 00" E	100.00	100.00
52	N 89° 00' 00" E	100.00	100.00
53	N 89° 00' 00" E	100.00	100.00
54	N 89° 00' 00" E	100.00	100.00
55	N 89° 00' 00" E	100.00	100.00
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58	N 89° 00' 00" E	100.00	100.00
59	N 89° 00' 00" E	100.00	100.00
60	N 89° 00' 00" E	100.00	100.00
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62	N 89° 00' 00" E	100.00	100.00
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64	N 89° 00' 00" E	100.00	100.00
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66	N 89° 00' 00" E	100.00	100.00
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72	N 89° 00' 00" E	100.00	100.00
73	N 89° 00' 00" E	100.00	100.00
74	N 89° 00' 00" E	100.00	100.00
75	N 89° 00' 00" E	100.00	100.00
76	N 89° 00' 00" E	100.00	100.00
77	N 89° 00' 00" E	100.00	100.00
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81	N 89° 00' 00" E	100.00	100.00
82	N 89° 00' 00" E	100.00	100.00
83	N 89° 00' 00" E	100.00	100.00
84	N 89° 00' 00" E	100.00	100.00
85	N 89° 00' 00" E	100.00	100.00
86	N 89° 00' 00" E	100.00	100.00
87	N 89° 00' 00" E	100.00	100.00
88	N 89° 00' 00" E	100.00	100.00
89	N 89° 00' 00" E	100.00	100.00
90	N 89° 00' 00" E	100.00	100.00
91	N 89° 00' 00" E	100.00	100.00
92	N 89° 00' 00" E	100.00	100.00
93	N 89° 00' 00" E	100.00	100.00
94	N 89° 00' 00" E	100.00	100.00
95	N 89° 00' 00" E	100.00	100.00
96	N 89° 00' 00" E	100.00	100.00
97	N 89° 00' 00" E	100.00	100.00
98	N 89° 00' 00" E	100.00	100.00
99	N 89° 00' 00" E	100.00	100.00
100	N 89° 00' 00" E	100.00	100.00



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE
 AND BELIEF THAT THE FOREGOING IS A TRUE AND
 CORRECT STATEMENT OF THE FACTS AND CIRCUMSTANCES
 RELATIVE TO THE LANDS DESCRIBED IN THIS PLAT.
 MARK E. RICKETT
 LICENSE NO. 10031

Southeastern Surveying, Inc.
 147 Raposa Creek Drive - Suite 102
 Charleston, South Carolina 29412
 (803) 795-9330

A SUBDIVISION PLAT OF
 TRACT A BEING A PORTION OF PART D BAYVIEW FARMS
 LOCATED IN THE TOWN OF JAMES ISLAND
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE: JAN 12, 1974	DRAWN: JH
CHECKED: JH	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74
DATE: 1/15/74	DATE: 1/15/74

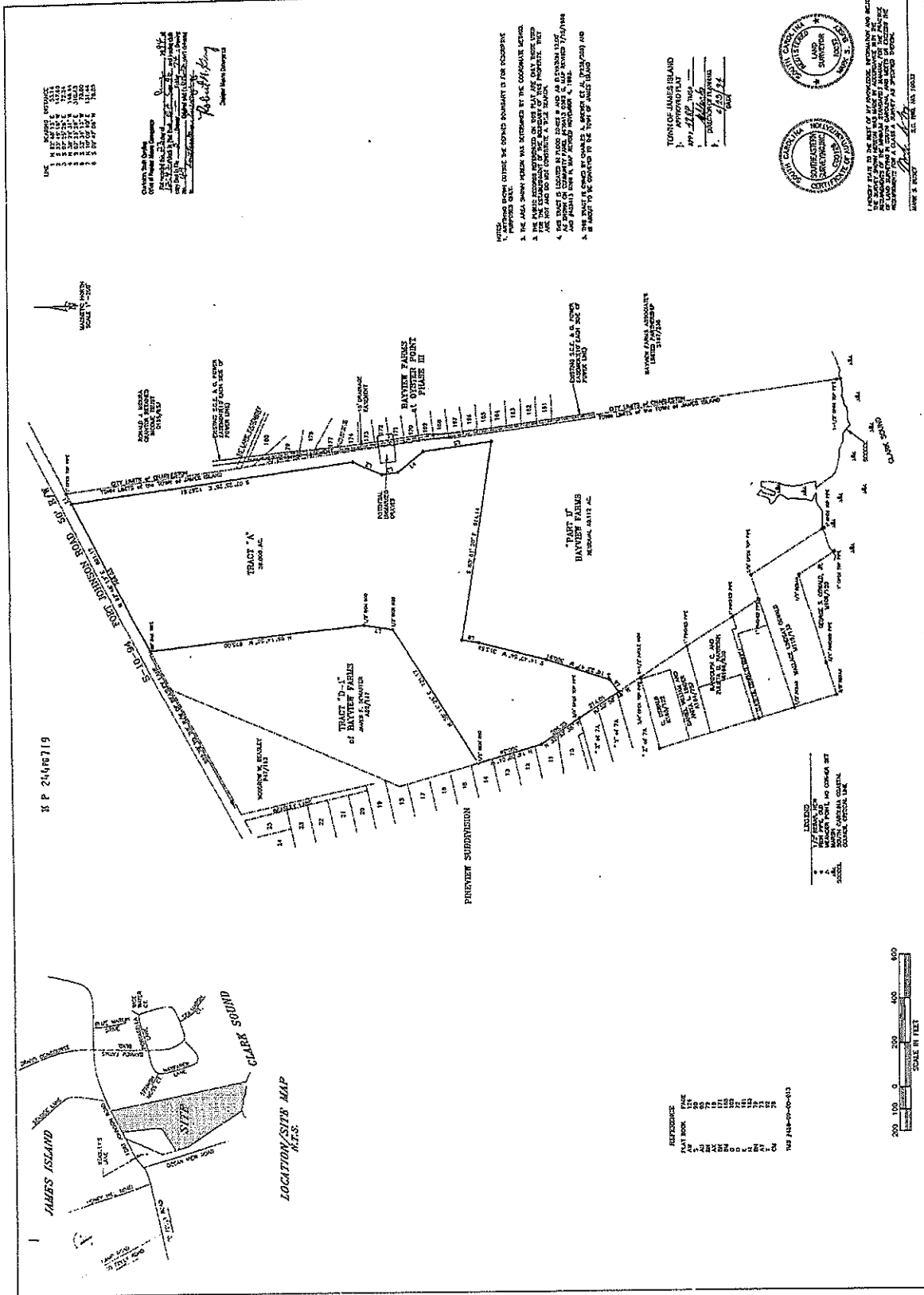


EXHIBIT C
 EA-096

CURVE TABLE				
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2	20	20	20	20
3	30	30	30	30
4	40	40	40	40
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6	60	60	60	60
7	70	70	70	70
8	80	80	80	80
9	90	90	90	90
10	100	100	100	100
11	110	110	110	110
12	120	120	120	120
13	130	130	130	130
14	140	140	140	140
15	150	150	150	150
16	160	160	160	160
17	170	170	170	170
18	180	180	180	180
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21	210	210	210	210
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28	280	280	280	280
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32	320	320	320	320
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38	380	380	380	380
39	390	390	390	390
40	400	400	400	400
41	410	410	410	410
42	420	420	420	420
43	430	430	430	430
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53	530	530	530	530
54	540	540	540	540
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57	570	570	570	570
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61	610	610	610	610
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63	630	630	630	630
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74	740	740	740	740
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78	780	780	780	780
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82	820	820	820	820
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84	840	840	840	840
85	850	850	850	850
86	860	860	860	860
87	870	870	870	870
88	880	880	880	880
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94	940	940	940	940
95	950	950	950	950
96	960	960	960	960
97	970	970	970	970
98	980	980	980	980
99	990	990	990	990
100	1000	1000	1000	1000

[illegible][illegible][illegible]

PRELIMINARY PLAT - DO NOT RECORD

WISCONSIN STATE THAT THIS FACILITARY PLAN WAS DRAWN AND CALCULATED BY THE DIRECTOR OF THE WISCONSIN DEPARTMENT OF REVENUE. I FURTHER STATE THAT THIS DRAWING IS CONFIDENTIAL IN NATURE AND IS NOT SUITABLE FOR RECORDING OR COMPLIANCE PURPOSES. NO FEELENDING HAS BEEN PROVIDED BY ME AT THIS TIME.

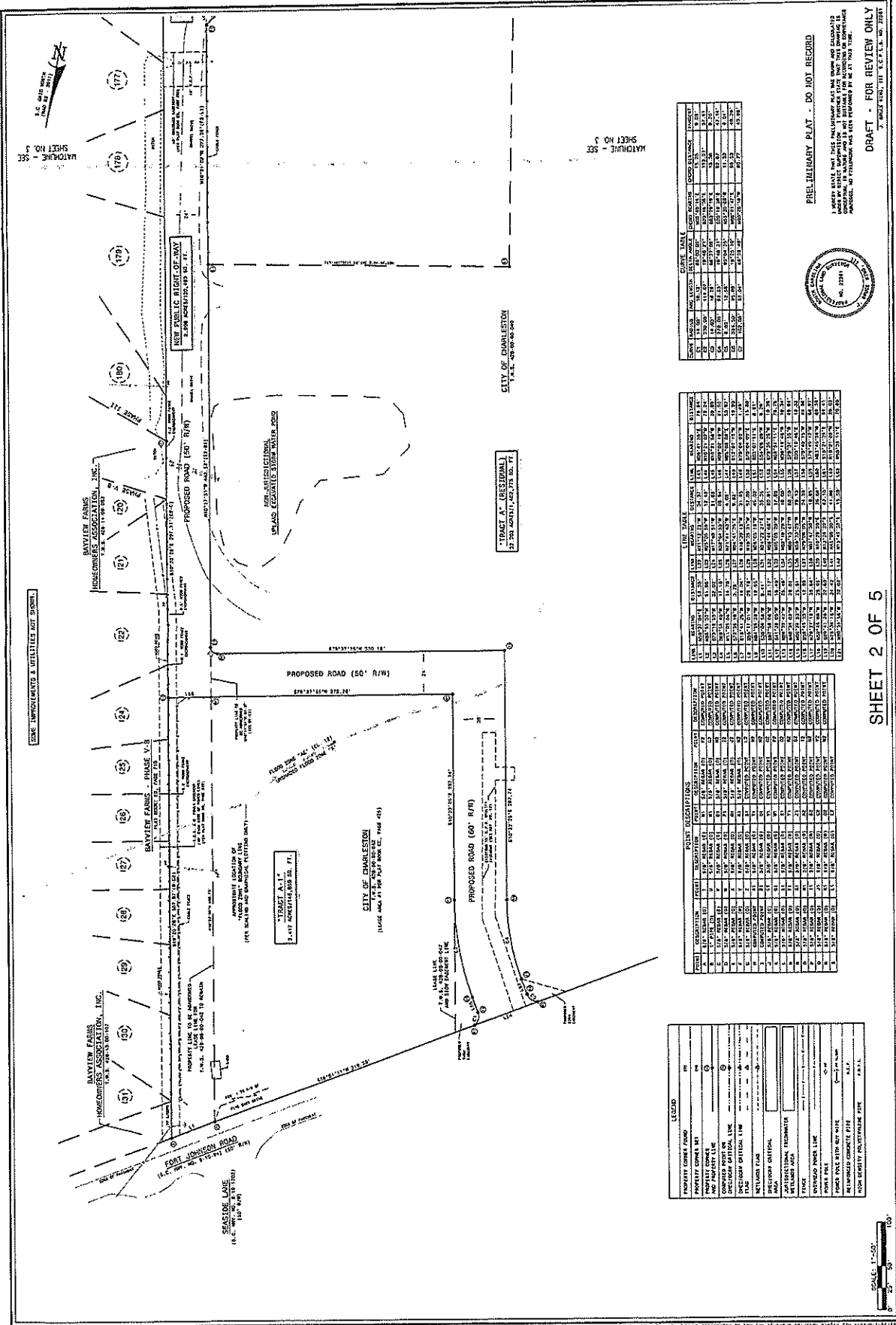
DATE: SEPTEMBER 1
PROJ. # 814203750
SURVEY: # N-140919
SCALE: 1" = 50'

FIRST BAPTIST CHURCH FOUNDATION
IN THE CITY OF CHARLESTON
CHARLESTON COUNTY, SOUTH CAROLINA

	S.F. NO.	SEE FILE
T.M.S. NO.	428-09-00-010 428-09-00-040 428-09-00-042 428-09-00-043	#17E ROCK



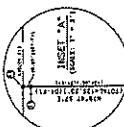
HGB0 SURVEYORS, LLC
COLUMBIA, SC
1215 KENNEDY STREET
COLUMBIA, SC 29201
HGB0SURV@GMAIL.COM
HGB0SURV@GMAIL.COM



SCALE: 1"=53'

1961 10 2 100

POWER POLE
POWER POLE WITH GUY WIRES
BEHIND THE POWER POLE

[illegible][illegible]

2 ON LEHS 35

SEE SHEET NO. 4

"PART 0" (RESIDUAL)
T.M.G. 428-00-00-013
18,312 ACB2/1,233,294 19. 11.

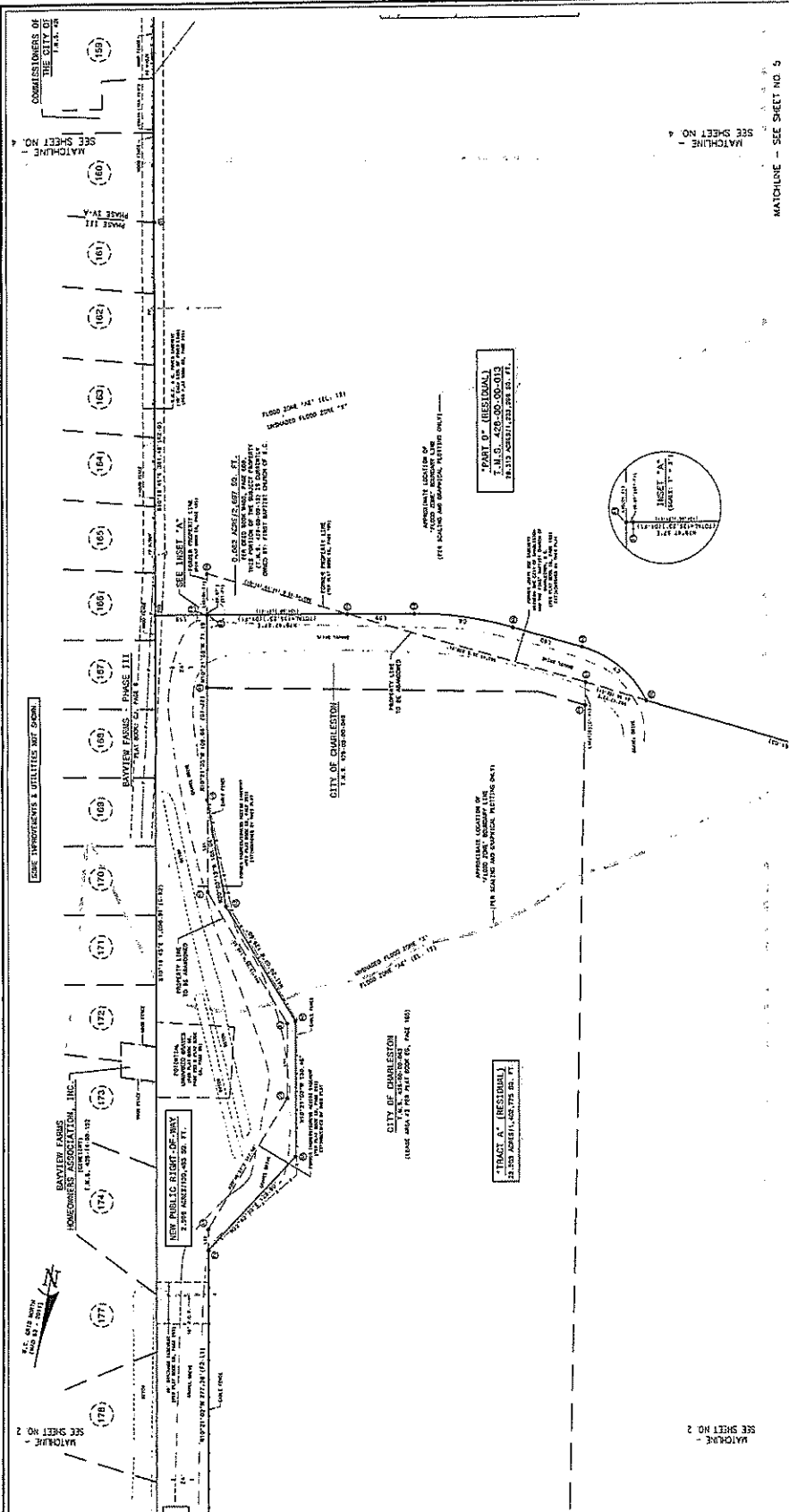
TRACT A* (RESIDUAL)
1,503 ACRES, 1,402,775 SQ. FT.

CITY OF CHARLESTON
T. W. S. 434-80-09-043
MAY 27 PM 7:41 0000 00. PAGE

APPROXIMATE LOCATION OF



HGBD SURVEYORS, LLC
 MOUNT PLEASANT, SC
 1416 MONROE BLVD. #100
 MOUNT PLEASANT, SC 29528
 TEL: 843/241-1111
 FAX: 843/241-1112
 WWW.HGBDSURVEYORS.COM



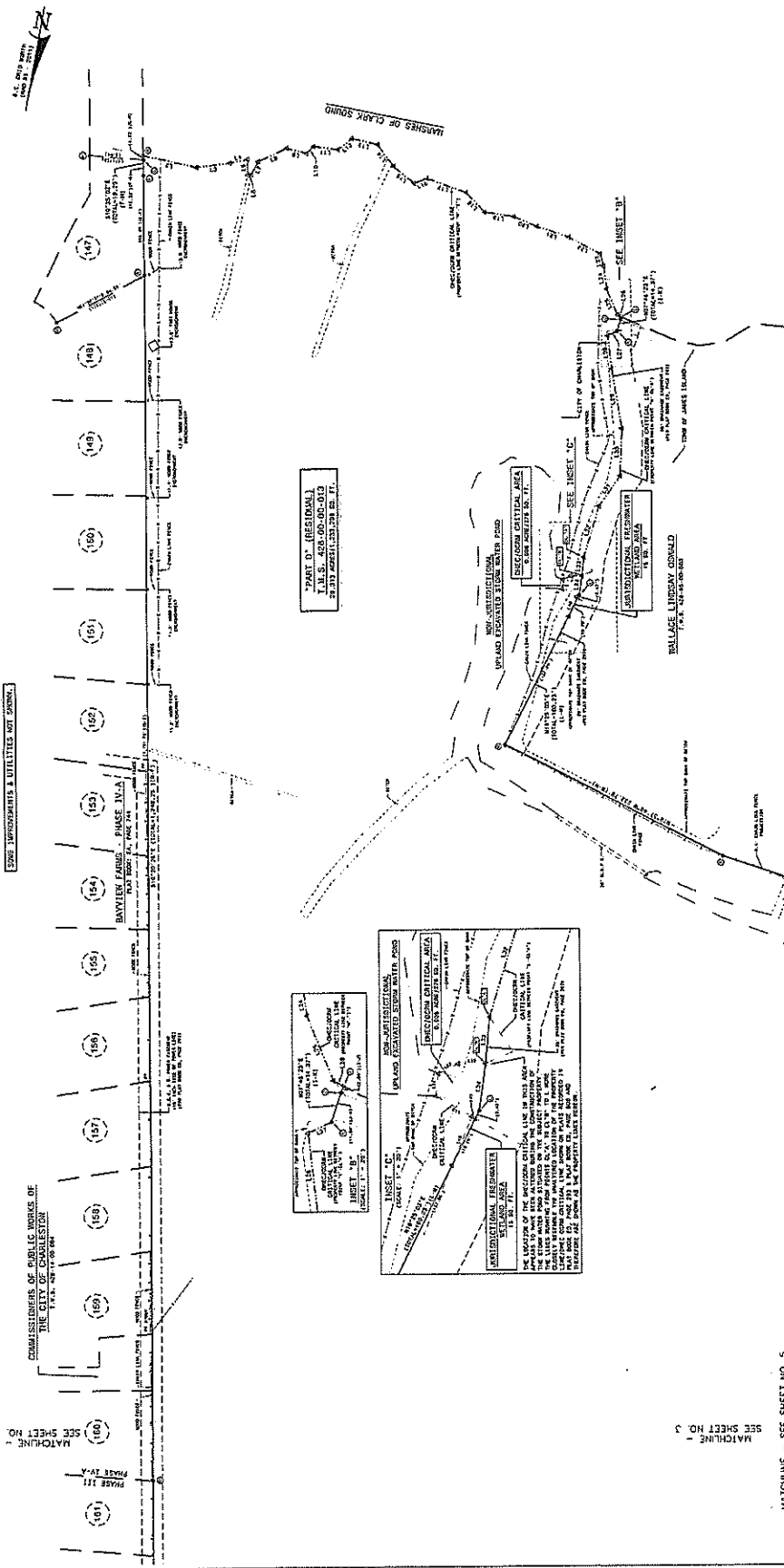
PRELIMINARY PLAT - DO NOT RECORD

CURVE	RAIL IN	WHEEL IN	WHEEL AMPL	WHEEL IN AMPL	CRACK SIZE IN	CRACK SIZE IN	CRACK SIZE IN
C1	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C2	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C3	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C4	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C5	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C6	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C7	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C8	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C9	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C10	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C11	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C12	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C13	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C14	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C15	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C16	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C17	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C18	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C19	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C20	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C21	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C22	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C23	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C24	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C25	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C26	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C27	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C28	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C29	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C30	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C31	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C32	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C33	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C34	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C35	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C36	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C37	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C38	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C39	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C40	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C41	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C42	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12
C43	1.10 (35)	15.12	15.12	15.12	15.12	15.12	15.12

[illegible][illegible]

NAME	JOHN J. COOPER
DATE	04/27/53
TIME	08:00
LOCATION	NEW YORK
REASON	FOR THE FIRST TIME
REASON	FOR THE SECOND TIME
REASON	FOR THE THIRD TIME
REASON	FOR THE FOURTH TIME
REASON	FOR THE FIFTH TIME
REASON	FOR THE SIXTH TIME
REASON	FOR THE SEVENTH TIME
REASON	FOR THE EIGHTH TIME
REASON	FOR THE NINTH TIME
REASON	FOR THE TENTH TIME
REASON	FOR THE ELEVENTH TIME
REASON	FOR THE TWELFTH TIME
REASON	FOR THE THIRTEENTH TIME
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MATCHLINE -
SEE SHEET NO. 3



SCALE: 1"=50'

RAFT - FOR REVIEW ONLY

PRELIMINARY PLAT - DO NOT RECORD

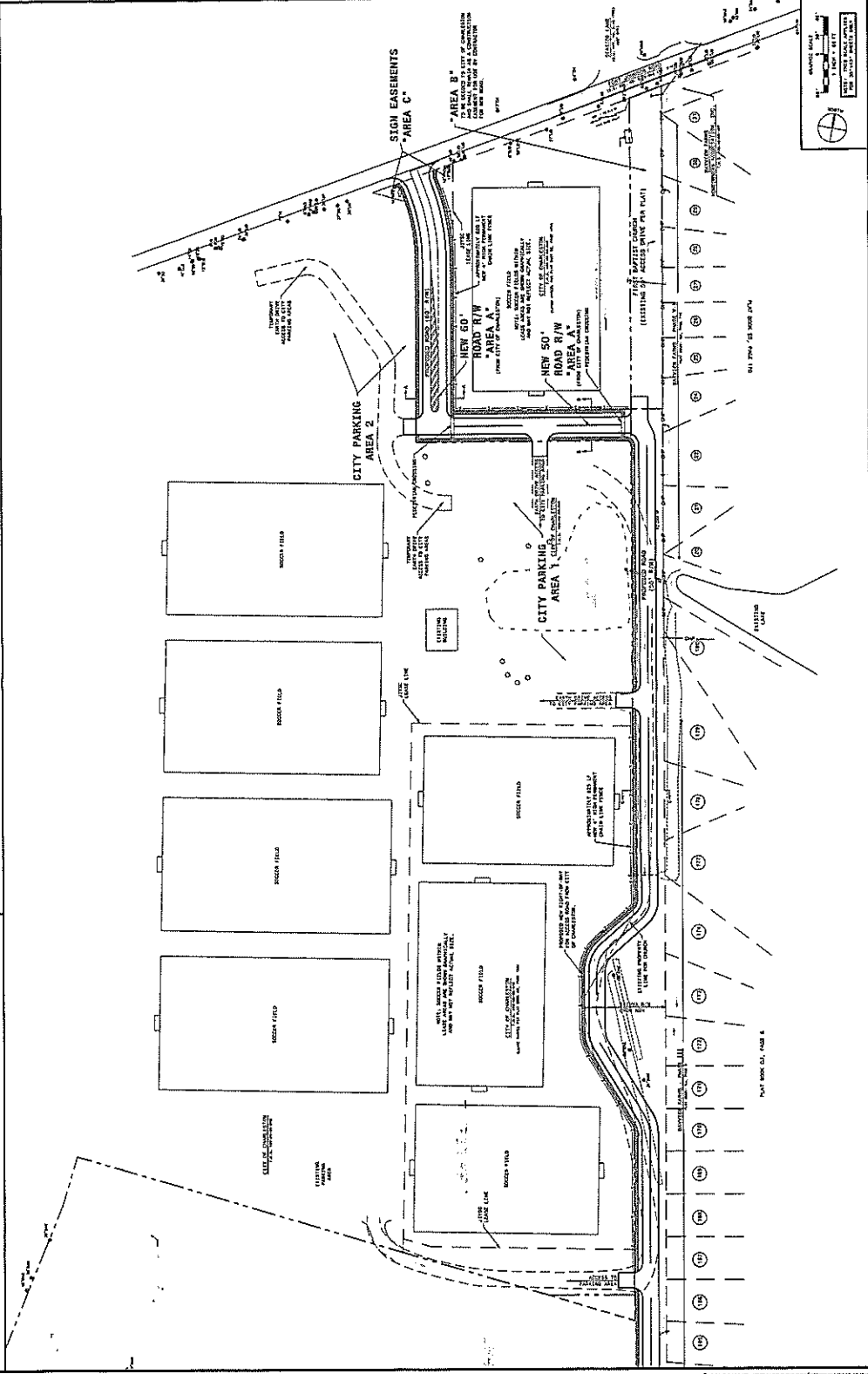
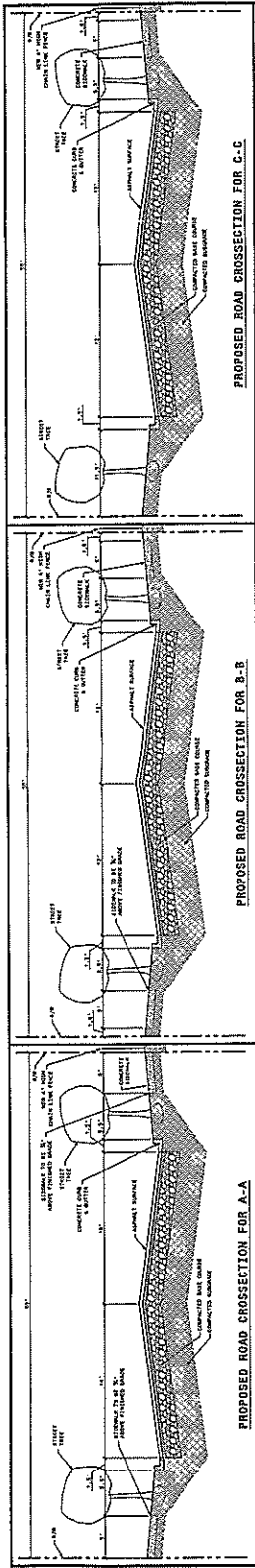
FIRST BAPTIST CHURCH FOUNDATION
IN THE CITY OF CHARLESTON
CHARLESTON COUNTY, SOUTH CAROLINA

[illegible]

A Bell Company



HGBD SURVEYORS, LLC
COLUMBIA, SC
NIGHT PLEASANT, SC





A Bell Company
 Messer, Cor, Bell & Reisinger Inc.
 Consulting Engineers
 174 MOUND PARK BLVD., SUITE 201
 PRINCETON, N.J. 08540
 TEL: 843-889-7500 FAX: 843-846-7300

[illegible]

2104:
FIRST BAPTIST CHURCH
WYVIEW FARMS
COUNTY,
ACCESS ROAD
IMPROVEMENTS
CHARLESTON, SC

[illegible]

TEMPORARY ACCESS & CONSTRUCTION SAFETY PLAN

EX-002

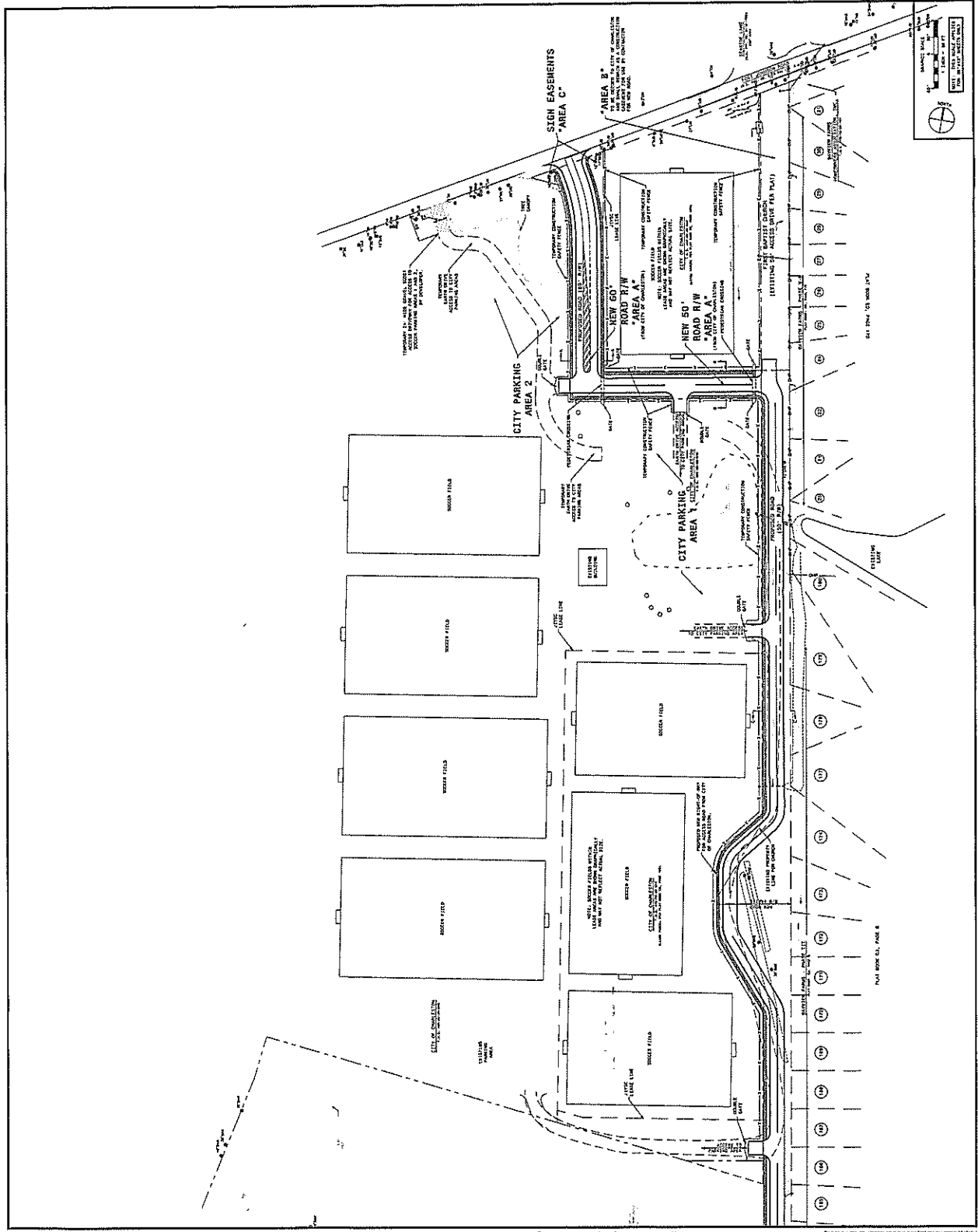


EXHIBIT F

Church Athletic Field

Church Athletic Field is outlined in red on the attached aerial photo.



d.)

REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: July 18, 2016

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Daniel Island, Berkeley County

TMS: Multiple per Daniel Island Development Agreement

PROPERTY OWNER: City of Charleston and Daniel Island Associates, LLC and its affiliates

ACTION REQUEST: Request authorization for the Mayor to sign the Fourth Amendment to Development Agreement (Daniel Island).

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Frances Cantwell</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	_____	<input type="checkbox"/>
Director Real Estate Management	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>

FUNDING: Was funding needed? Yes ☒ No ☐

If yes, was funding previously approved?* Yes ☐ No ☒

*If approved, provide the following: Dept/Div. _____ Acct: _____

Balance in Account _____ Amount needed for this item See below

Multi-purpose recreation center: \$5,393,752 minimum funds required within 24 months
Neighborhood Park: \$513,691 minimum funds required within 24 months

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.

COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: July 18, 2016

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Daniel Island, Berkeley County

TMS: Multiple per Daniel Island Development Agreement

PROPERTY OWNER: City of Charleston and Daniel Island Associates, LLC and its affiliates

ACTION REQUEST: Request authorization for the Mayor to sign the Fourth Amendment to Development Agreement (Daniel Island).

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

ACTION: What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) _____ Purchaser _____

☐ **DONATION/TRANSFER**
Donated By: _____

☐ **FORECLOSURE**
Terms: _____

☐ **PURCHASE**
Terms: _____

☐ **CONDEMNATION**
Terms: _____

☐ **OTHER**
Terms: _____

☐ **SALE** Seller (Property Owner) _____ Purchaser _____

☐ **NON-PROFIT ORG, please name** _____
Terms: _____

☐ **OTHER**
Terms: _____

☐ **EASEMENT** Grantor (Property Owner) _____ Grantee _____

☐ **PERMANENT**
Terms: _____

COMMERCIAL REAL ESTATE FORM

☐

TEMPORARY

Terms: _____

☐

LEASE

Lessor: _____

Lessee: _____

☐

INITIAL

Terms: _____

☐

RENEWAL

Terms: _____

☐

AMENDMENT

Terms: _____

☒

Development Agreement

Owner: _____

Varied: City of Charleston and Daniel Island Associates, LLC and its affiliates

Terms: _____

The 4th Amendment authorizes use of funds for park at south end of the Island for a Recreation Center at Governor's Park; authorizes the transfer of land for a waterfront park to the Daniel Island Town Assoc. (DITA), which will build a waterfront park with City input on design and deed restricted for public access; authorizes a lease of park land on south end of Island to DITA for recreation and agriculture uses, subject to providing access by the general public; requires DITA and City to commence permitting for road to south end land, expenses to be paid by DITA; authorizes, at City's election, the transfer of funds for a neighborhood park on the north end of the Island to Governor's park, and if done, Developer may develop land and provide a one acre public park. All construction obligations, except building the waterfront park, to start within 24 months of the 4th Amendment. Minimum investment in Recreation Center: \$5,393,752; Minimum investment in Neighborhood park: \$513,691.

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes

☐

No

☐

N/A

☒

Results: _____

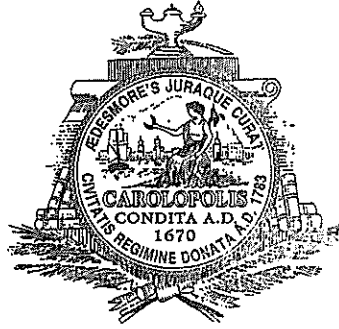
COMMERCIAL REAL ESTATE FORM

Signature: _____

Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

NEED: Identify any critical time constraint(s).



Ratification
Number _____

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF CHARLESTON A FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE DANIEL ISLAND COMPANY, INC., DANIEL ISLAND INVESTMENTS, LLC AND DANIEL ISLAND ASSOCIATES, LLC, AS ASSIGNORS OF THE HARRY FRANK GUGGENHEIM FOUNDATION AND DANIEL ISLAND DEVELOPMENT COMPANY, INC.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City the Fourth Amendment to Development Agreement, the Development Agreement being originally between the City and The Harry Frank Guggenheim Foundation (the "Foundation") and Daniel Island Development Company, Inc. (the "DIDC"), the Foundation and DIDC having assigned their respective interests under said Development Agreement to The Daniel Island Company, Inc, Daniel Island Investments, LLC and Daniel Island Associates, LLC (the "Assignees"), a copy of said Fourth Amendment between the City and the Assignees being attached hereto as Exhibit A and made a part hereof.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this ____ day of _____
in the Year of Our Lord, 2016,
and in the ____th Year of the Independence of
the United States of America

John J. Tecklenburg, Mayor

ATTEST:

Vanessa Turner Maybank
Clerk of Council

THIS CONTRACT IS SUBJECT TO ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

FOURTH AMENDMENT TO
DEVELOPMENT AGREEMENT
(DANIEL ISLAND)

THIS FOURTH (4TH) AMENDMENT TO THE DANIEL ISLAND DEVELOPMENT AGREEMENT (the "Fourth Amendment") is made and entered into this ____ day of _____, 2016 between the City of Charleston, South Carolina, a South Carolina Municipal Corporation (the "City") and The Daniel Island Company, Inc., a South Carolina corporation, ("DIC"), Daniel Island Investments, LLC, a South Carolina limited liability company ("DII") and Daniel Island Associates, LLC, a Delaware limited liability company, ("DIA") ("DIC, DII and DIA collectively, the "Owner Parties").

WHEREAS, the City, The Harry Frank Guggenheim Foundation, a not-for-profit corporation organized under the laws of the State of New York, (the "Foundation") and Daniel Island Development Company, Inc., a business corporation organized under the laws of the State of South Carolina, ("DIDC") entered into that certain Development Agreement dated June 1, 1995 which was recorded on June 23, 1995 in the Berkeley County RMC Office in Book 681, Page 300 (the "Development Agreement"); and

WHEREAS, the City, the Foundation and DIDC amended the Development Agreement by First Amendment to the Development Agreement dated June, 1997 and recorded in Book 1092, Page 275 on June 25, 1997 in the Berkeley County RMC Office (the "First Amendment"); and

WHEREAS, the Foundation sold all of its interest in Daniel Island and Rhoden Island to DIC and DII and assigned its rights as an "Owner Party" under the Development Agreement to DIC

and DII by Assignment and Assumption of Rights and Easements dated June 24, 1997 and recorded in Book 1093, page 290 in the Berkeley County RMC Office; and

WHEREAS, DIDC sold all of its interest in Daniel Island and Rhoden Island to DIC and DII and assigned its rights as an “Owner Party” under the Development Agreement to DIC and DII by Assignment and Assumption of Rights and Easements dated June 24, 1997 and recorded in Book 1093, Page 298 in the Berkeley County RMC Office; and

WHEREAS, the City and the Owner Parties amended the Development Agreement by the Second Amendment to the Development Agreement which is recorded in Book 1695, Page 74 in the Berkeley County RMC Office; and

WHEREAS, certain of the properties owned by DIC and DII were transferred to DIA and DIA became an “Owner Party” under the Development Agreement by Assignment and Assumption Agreement recorded in Book 1478, Page 307 in the Berkeley County RMC Office; and

WHEREAS, the City, DIC, DII and DIA (DIC, DII and DIA collectively, the “Owner Parties”) amended the Development Agreement by the Third Amendment to the Development Agreement which is recorded in Book 1931, Page 187 in the Berkeley County RMC Office; and

WHEREAS, the City and the Owner Parties desire to amend the Development Agreement by this Fourth Amendment to reflect changed circumstances since 1995 and the current needs and goals of the parties and the Daniel Island community with respect to the Development Agreement; and

WHEREAS, the City and the Owner Parties agree that the funds budgeted for the District Park South of the Mark Clark of \$3,150,000 in 1991 dollars (equal to \$5,393,752 in 2016 dollars) should be allocated to improvements at Governor’s Park; and

WHEREAS, Daniel Island Town Association, Inc., a South Carolina nonprofit corporation

("DITA") joins this Amendment and agrees to be bound by the terms applicable to DITA.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Development Agreement as follows:

1. The City and Owner Parties hereby delete Article 5, Article 6, Article 7, Exhibit 2.10, Exhibit 2.11, Exhibit 5.4, Exhibit 6.8 and all definitions used solely in these deleted Articles and Exhibits (collectively the "Deleted Development Agreement Provisions"). The parties agree that all obligations contained in Deleted Development Agreement Provisions have been terminated, satisfied in full or otherwise waived. The parties substitute and replace the Deleted Development Agreement Provisions with the provisions of this Fourth Amendment.

2. The City agrees to construct a multi-purpose recreation center (the "Center") of approximately 25,000 square feet on Governor's Park with a total budget of not less than \$3,150,000 in 1991 dollars (equal to \$5,393,752 in 2016 dollars). Upon the execution of this Fourth Amendment, the City agrees to expeditiously proceed with a program and scope of work for the Center and pursue such other efforts to enable construction of the Center to commence within 24 months of the effective date of this Fourth Amendment. The size, scope and program of the Center shall be subject to the budget. It is agreed that the Center may be constructed pursuant to a private/public partnership with a design-build construction contract. For purposes hereof, construction shall be deemed to have commenced upon the execution of a construction contract and the commencement of construction for the Center. In the event that the City elects not to construct the City Neighborhood Park more fully described in Paragraph 6, the City shall invest the \$300,000 in 1991 dollars (equal to \$513,691 in 2016 dollars) in the recreation center at Governor's Park instead.

3. The City shall convey to Daniel Island Town Association, Inc. a South Carolina non-profit corporation ("DITA") the dock and adjacent greenspace as more fully shown on attached "Exhibits

B and B-1, and a perpetual access and maintenance easement for all trails, lighting, boardwalks and walkways that the Owner Parties funded in connection with the construction of the Family Circle Tennis Cup Tournament Center ("FCC Tennis Center"), including the boardwalks and the paths around the playground and those behind the FCC Tennis Center that run through Governor's Park, all as more fully shown on attached "Exhibit A" as RO1, RO2 (collectively the "FCC Dock and Trails"). DITA shall maintain the FCC Dock and Trails to a maintenance standard equal to the City's maintenance standards for other City park facilities on Daniel Island ("City Maintenance Standard"). All costs associated with the conveyance, including without limitation surveys, subdivisions, title insurance and the City's reasonable attorneys' fees, shall be the responsibility of the DITA. The City's conveyance to the DITA of the FCC Dock and easement to the FCC Trails shall be subject to perpetual, free-of-charge public access deed restrictions that allow access to the FCC Dock and Trails at and during all times that Governor's Park is open to the public, and a reverter in favor of the City in the event that the DITA shall fail to maintain the FCC Dock and Trails to the City Maintenance Standard after written notice and an opportunity to cure of not less than 180 days. The City's conveyance of the FCC Dock and Trails shall also be subject to all terms and conditions of that certain Agreement between the City and Charleston Tennis, LLC, dated September 23, 2014, and attached hereto as Exhibit F and incorporated herein by reference (to include securing any required approvals of Charleston Tennis, LLL to the contemplated transfers). Any maintenance projects, such as erosion control, in process as of the date of this Fourth Amendment will be completed by the City before the conveyances of the FCC Dock and Trails.

4. Daniel Island Company, Inc. shall convey to the City land for a waterfront park as more fully shown on the attached "Exhibit C" ("Waterfront Park Land"), which land is adjacent to the FCC Dock and Trails. "). All costs associated with the conveyance, including without limitation surveys, subdivisions, title insurance and the City's reasonable attorneys' fees, shall be the responsibility of the Daniel Island Company, Inc. Upon receipt of title to the Waterfront Park Land,

the City shall immediately convey the Waterfront Park Land to the DITA subject to perpetual, free-of-charge public access deed restrictions and a reverter in favor of the City in the event that the DITA shall fail to meet its maintenance obligations with respect to the Waterfront Park Land after written notice and an opportunity to cure of not less than 180 days. The DITA shall be responsible for improving the Waterfront Park Land by the addition of amenities what will enable the Waterfront Park Land to appear and function as a public park, including without limitation, the installation of parking, grassing, grading, irrigation, seating, park furniture, trail improvements, landscaping and lighting. The City shall be entitled to review and provide input on the plans for improvements to the Waterfront Park Lands. The hours of operation of the Waterfront Park Land shall be comparable to the hours of operation Governor's Park, during which times the Waterfront Park Land shall be accessible to the general public on the same terms and conditions as is accorded to DITA's members, guests and invitees. The Waterfront Park Land shall not be encumbered without approval of the City, which approval shall not be unreasonably withheld.

5. The City shall give a 30 year lease to the DITA ("South End Lease") for Tract AA-5 and AA- 2 containing approximately 52.23 acres as more fully shown on the plat dated March 11, 1997 and recorded in Plat Cabinet M, Pages 309-312 in the Berkeley County Register of Deeds Office as more fully shown on attached "Exhibit D" ("South End Property"). The South End Lease shall contain provisions that enable two (2) ten-year extensions. The parties may mutually agree to add additional property to the South End Lease. The South End Lease shall be subject to perpetual, free-of-charge public access lease and use restrictions limiting the use of the property leased under the South End Lease to recreational uses and agricultural uses. The rent for each term and extension term shall be \$100 paid in advance at the beginning of the term or extension term. A condition of the South End Lease will require that the DITA provide a publicly dedicated road to the South End Property. Within twenty-four (24) months of the effective date of this Fourth Amendment, the City and the DIC will cooperate in seeking the necessary permits to widen and

pave the Causeway that provides access to the South End Property. Upon receipt of the necessary permits, DIC will pave the Causeway and dedicate it to the City. A condition of the South End Lease shall require the DITA to grant the City, its officers, officials, agents, guests and invitees, access rights over and across the South End Property locations as the City and the DITA shall mutually agree in their reasonable discretion. In the event of breach of the lease terms by the DITA and the failure to cure after written notice and the expiration of 180 days, the South End Lease shall provide that the City shall have the right to terminate the South End Lease and regain possession of the leased land.

6. The City reserves the option to construct one neighborhood park ("City Neighborhood Park") with a construction budget of not less than \$300,000 in 1991 dollars (equal to \$513,691 in 2016 dollars) on the lands north of the Mark Clark Expressway more fully described in "Exhibit E" (Parcel I Tract F-A). The City shall notify Daniel Island Associates of its intention to construct the City Neighborhood Park and commence construction within 24 months of the effective date of this Fourth Amendment (the "Park Notice"). Upon such notification and once a construction contract has been executed for the City Neighborhood Park, Daniel Island Associates shall cause the land for the City Neighborhood Park to be conveyed to the City. Daniel Island Associates shall be responsible for all costs associated with the conveyance, including without limitation surveys, subdivisions, title insurance and the City's reasonable attorneys' fees. If the City fails to enter into a construction contract for the park improvements within 24 months of the execution of this Fourth Amendment, Daniel Island Associates shall have no obligation to transfer the land for the City Neighborhood Park to the City, the City shall invest the \$300,000 in 1991 dollars (equal to \$513,691 in 2016 dollars) in the recreational center at Governor's Park instead, and the City shall have no liability for its failure to construct the City Neighborhood Park. If the City does not provide the Park Notice or gives a written waiver of its rights to the City Neighborhood Park or fails to commence construction within the timeframes set forth herein, the City shall be deemed to have

relinquished all rights to the City Neighborhood Park Land and Daniel Island Associates shall have the right to develop Parcel I Tract F-A as it deems appropriate; provided however, any development shall include a public neighborhood park of not less than 1 acre of contiguous highland.

7. The City agrees to release and satisfy that certain mortgage dated June 18, 1997, recorded in Book 1092, Page 320, given by Daniel Island Development Company and the Harry Frank Guggenheim Foundation to the City encumbering 82.947 acres now owned by the State Ports Authority.

8. Except as amended by this agreement, the Development Agreement shall remain in full force and effect.

Signature Page Follows

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to the Development Agreement as of the date first above written, after due authorization by the Charleston City Council by Ordinance No. _____.

IN THE PRESENCE OF:

THE CITY OF CHARLESTON

By: _____ (L.S.)
John Tecklenburg, Its Mayor

ATTEST: _____
Clerk of Council

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

The undersigned Notary Public does hereby certify that The City of Charleston, by John Tecklenburg, its Mayor, personally appeared before me and acknowledged the due execution of the above document on the ____ day of _____, 2016.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Signature Page of Fourth Amendment to
Development Agreement (Daniel Island) Continued

IN THE PRESENCE OF:

THE DANIEL ISLAND COMPANY, INC., a
South Carolina corporation

By: _____(L.S.)
Matthew Sloan
Its: President

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

The undersigned Notary Public does hereby certify that The Daniel Island Company, Inc. by Matthew Sloan, its President, personally appeared before me and acknowledged the due execution of the above document on the ____ day of _____, 2016.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Signature Page of Fourth Amendment to
Development Agreement (Daniel Island) Continued

IN THE PRESENCE OF:

DANIEL ISLAND INVESTMENTS L.L.C., a
South Carolina limited liability company

By: _____(L.S.)
Matthew Sloan
Its: President

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

The undersigned Notary Public does hereby certify that Daniel Island Investments, L.L.C. by Matthew Sloan, its President, personally appeared before me and acknowledged the due execution of the above document on the ____ day of _____, 20162.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Signature Page of Fourth Amendment to
Development Agreement (Daniel Island) Continued

IN THE PRESENCE OF:

DANIEL ISLAND ASSOCIATES L.L.C., a
Delaware limited liability company

By: _____(L.S.)
Matthew Sloan
Its: President

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The undersigned Notary Public does hereby certify that Daniel Island Associates L.L.C. by Matthew Sloan, its President, personally appeared before me and acknowledged the due execution of the above document on the ____ day of _____, 2016.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Signature Page of Fourth Amendment to
Development Agreement (Daniel Island) Continued

Daniel Island Town Association, Inc. a South Carolina nonprofit corporation joins in this
Fourth Amendment to the Development Agreement (Daniel Island) and agrees to be bound by
the terms applicable to it.

IN THE PRESENCE OF:

DANIEL ISLAND TOWN ASSOCIATION, INC. a
South Carolina nonprofit corporation

By: _____ (L.S.)
Matthew Sloan
Its: Vice President

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

The undersigned Notary Public does hereby certify that Daniel Island Town Association, Inc. by Matthew Sloan, its Vice President, personally appeared before me and acknowledged the due execution of the above document on the ____ day of _____, 2016.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

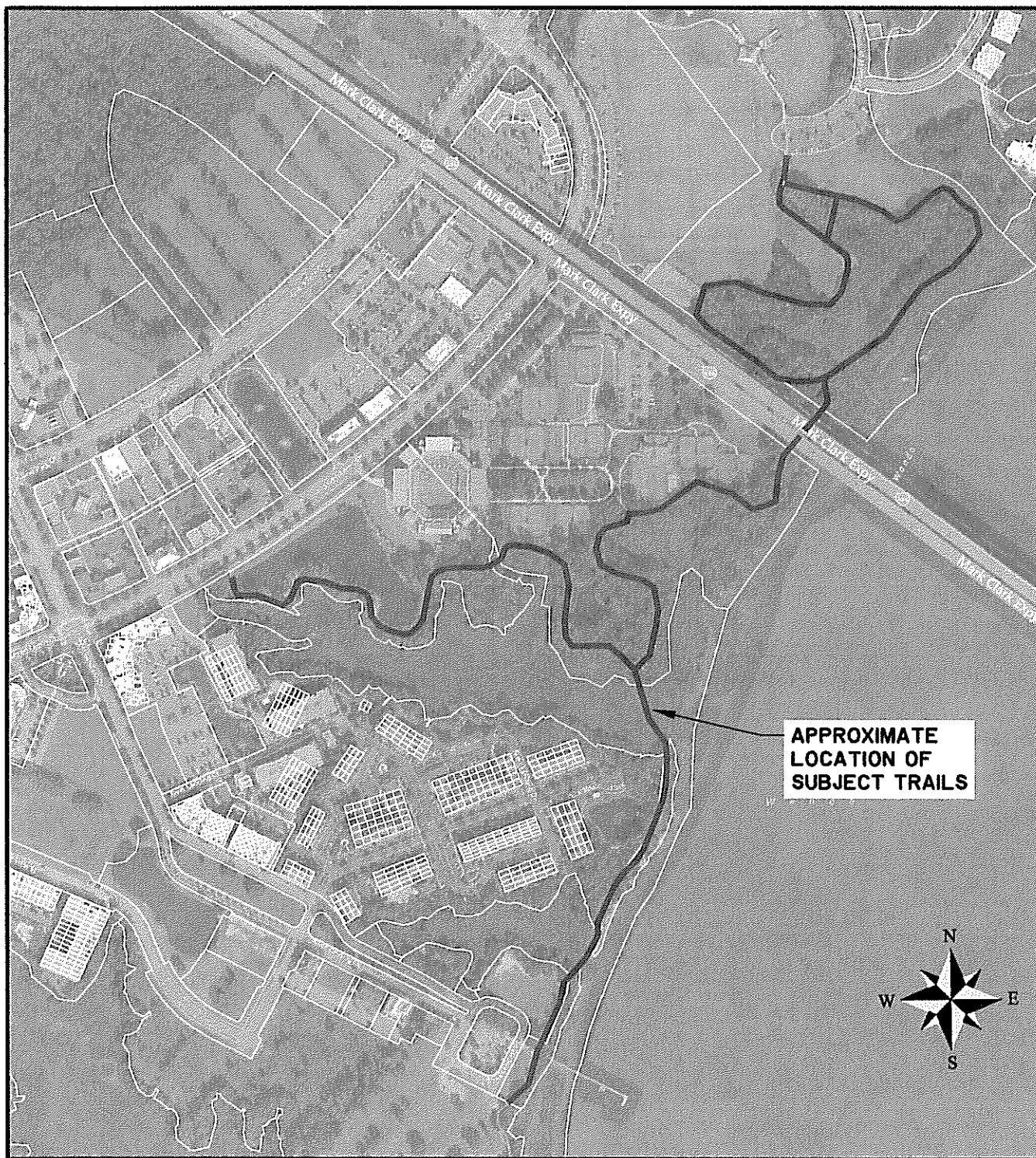


EXHIBIT A

CLIENT:

THE DANIEL ISLAND COMPANY, INC.

LOCATION: CITY OF CHARLESTON, SOUTH CAROLINA

DATE: 06/20/16

DRAWN BY: BDR

SHEET: —

JOB NUMBER: J-12357.0000

REVIEWED BY: BDR

SCALE: 1" = 500'



THOMAS & HUTTON
Engineering | Surveying | Planning | GIS | Consulting

1503 Newcastle Street • Suite A
Brunswick, GA 31520 • 912.466.0536

www.thomasandhutton.com

DANIEL ISLAND
CITY OF CHARLESTON
BERKELEY COUNTY, S.C.

SCALE 1" = 50'

RECORDING BOOK 100, PAGE 100-100
RECORDING BOOK 100, PAGE 100-100

**FINAL PLAT OF
RIVER LANDING DRIVE
BLOCKS C, I, K, L & O**

DATE: 11/18/04
SHEET: 1 OF 1

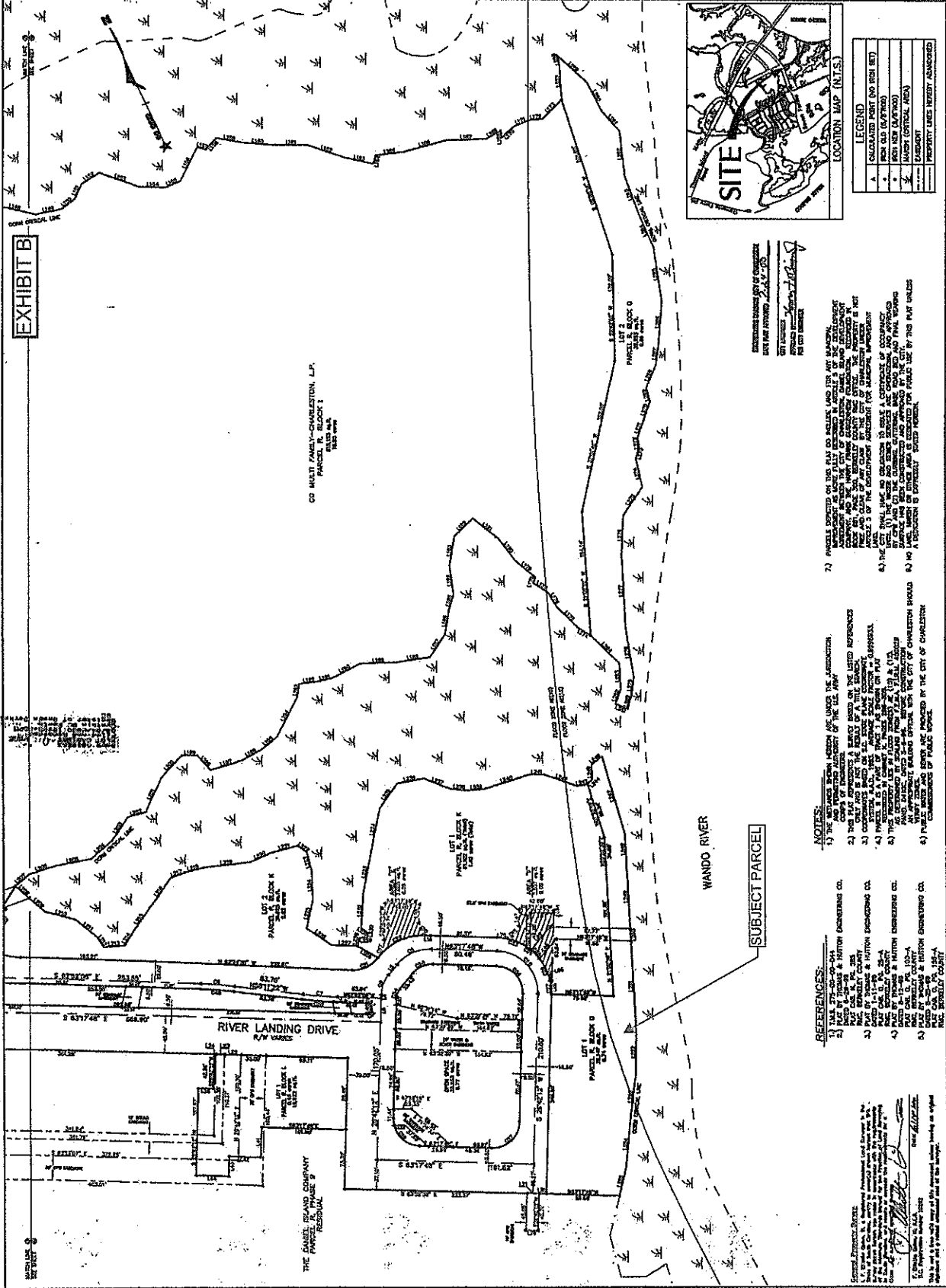


EXHIBIT B

NOTES:

- THE BOUNDARIES BETWEEN THE CITY OF CHARLESTON AND THE CITY OF DANIEL ISLAND ARE SHOWN BY THE DASHED LINE.
- THIS PLAT IS A PART OF THE PLAT OF RIVER LANDING DRIVE, BLOCKS C, I, K, L & O, AND IS SUBJECT TO THE CONDITIONS AND COVENANTS THEREON.
- THE PLAT IS A PART OF THE PLAT OF RIVER LANDING DRIVE, BLOCKS C, I, K, L & O, AND IS SUBJECT TO THE CONDITIONS AND COVENANTS THEREON.
- THE PLAT IS A PART OF THE PLAT OF RIVER LANDING DRIVE, BLOCKS C, I, K, L & O, AND IS SUBJECT TO THE CONDITIONS AND COVENANTS THEREON.
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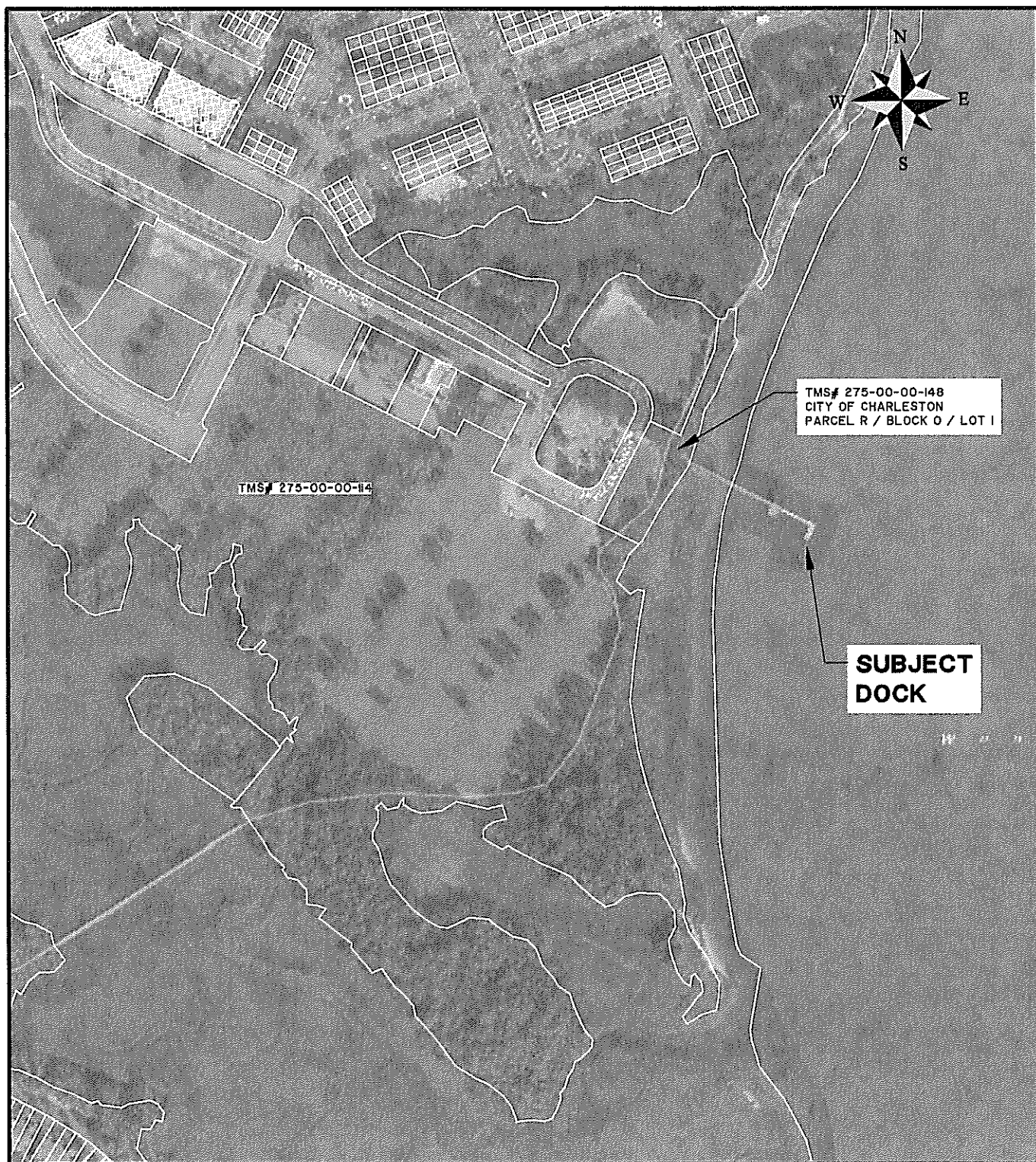


EXHIBIT B.1

CLIENT:
THE DANIEL ISLAND COMPANY, INC.

LOCATION: CITY OF CHARLESTON, SOUTH CAROLINA

DATE: 06/20/16

DRAWN BY: BDR

SHEET: ---

JOB NUMBER: J-12357.0000

REVIEWED BY: BDR

SCALE: 1" = 300.000'



THOMAS & HUTTON
Engineering | Surveying | Planning | GIS | Consulting

682 Johnnie Dodds Blvd. • Suite 100
Mt. Pleasant, SC 29464 • 843.849.0200

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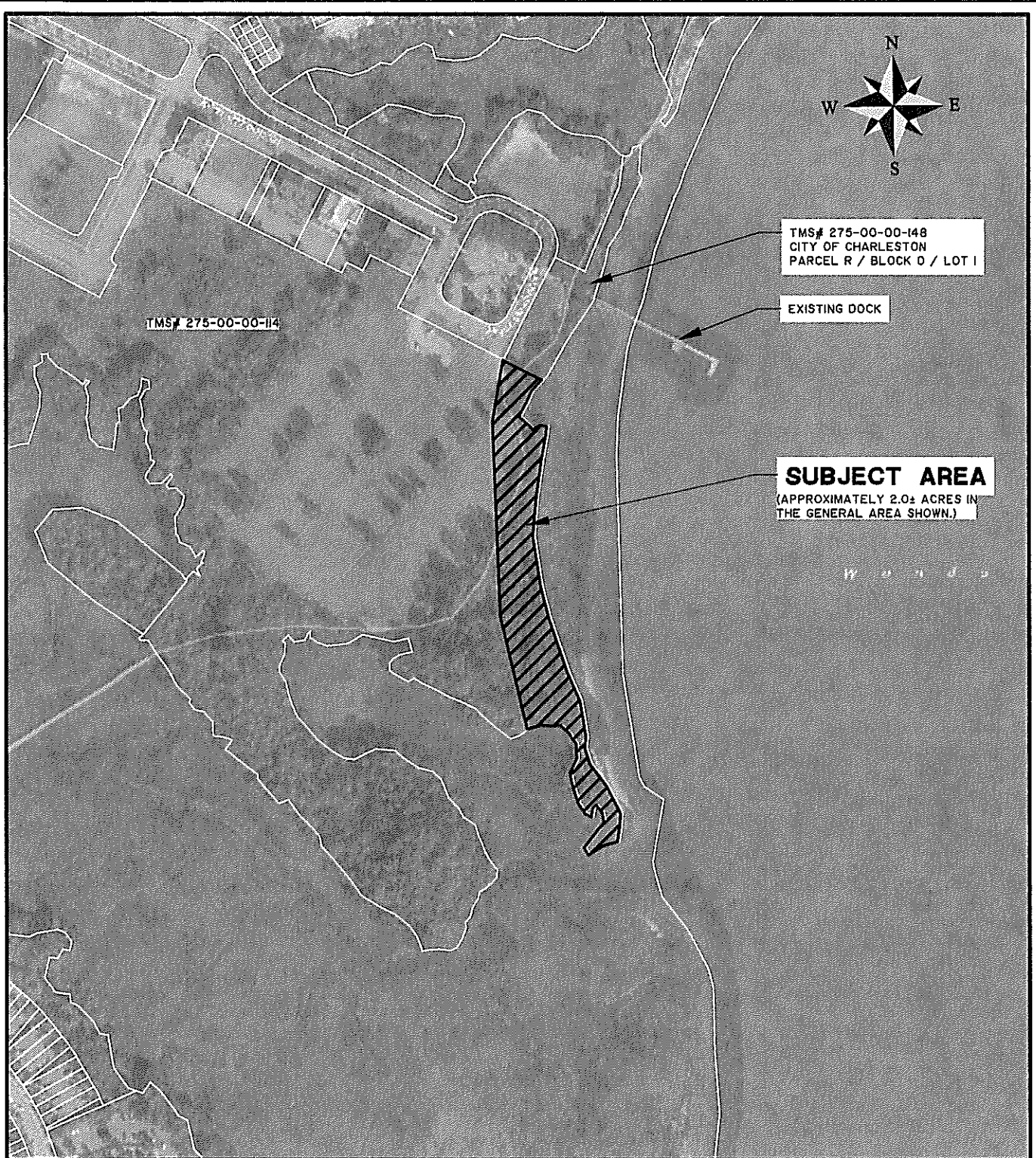


EXHIBIT C

CLIENT:
THE DANIEL ISLAND COMPANY, INC.

LOCATION: CITY OF CHARLESTON, SOUTH CAROLINA

DATE: 06/20/16

DRAWN BY: BDR

SHEET: ---

JOB NUMBER: J-12357.0000

REVIEWED BY: BDR

SCALE: 1" = 300'

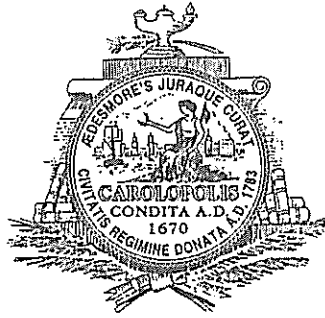


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RECEIVED
 DEPT. OF AGRICULTURE
 OFFICE OF THE SECRETARY
 WASHINGTON, D. C.
 JUL 10 1900


 Ratification
 Number 2014-127

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AGREEMENT WITH CHARLESTON TENNIS, LLC PERTAINING THE LEASE AND MANAGEMENT OF CITY-OWNED FACILITIES KNOWN AS THE FAMILY CIRCLE STADIUM, SATELLITE COURTS, RAQUET CLUB AND THE GROUNDS ASSOICATED THEREWITH, ALL AS SET FORTH IN THE AGREEMENT ATTACHED TO THIS ORDINANCE AS EXHIBIT A AND INCORPORATED THEREIN BY REFERENCE.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMEBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City an agreement with Charleston Tennis, LLC pertaining to the lease and management of City-owned property known as the Family Circle Stadium, Satellite Courts, Racquet Club and Grounds, the terms of said lease and management being more fully set forth in the Agreement attached to this Ordinance as Exhibit A and made a part hereof.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this 23rd day of
September in the Year of Our Lord, 2014,
 and in the 239th Year of the Independence of
 the United States of America

Joseph P. Riley, Jr., Mayor

ATTEST:

Clerk of Council

AGREEMENT

THIS AGREEMENT (herein "Agreement") is made and entered into as of the 23rd day of September, 2014 (the "Effective Date"), by and between Charleston Tennis, LLC, a limited liability company formed under the laws of the State of Delaware (herein "Charleston Tennis") and the City of Charleston, South Carolina (herein "Charleston").

RECITALS

WHEREAS, Charleston owns a sports and recreational park on Daniel Island, located in the City of Charleston, County of Berkeley, State of South Carolina (the "Park"), amenities of such park including, but not being limited to, a stadium tennis court referred to by the parties as the Family Circle Stadium (the "Family Circle Stadium"), satellite tennis courts (the "Satellite Courts"), a racquet club and other racquet sport structures and facilities (the "Racquet Club"), and the grounds associated therewith (the "Grounds"), all as further described on Exhibits A and B hereto (aggregately the "Tennis Center"); and

WHEREAS, Charleston owns a dock and boardwalk located immediately to the south of the Tennis Center on the Wando River on Daniel Island as further described on Exhibit A hereto (the "Dock"); and

WHEREAS, Charleston and Gruner + Jahr USA Publishing, a division of Gruner + Jahr Printing & Publishing Co. ("G+J"), predecessor-in-interest to Charleston Tennis, entered into an agreement dated as of May 1, 2000, for the construction, leasing, maintenance and operation of the Tennis Center and G+J's use of the Dock and other areas of the Park in connection with its use of the Tennis Center, for a term commencing on May 1, 2000, and ending on the date thirty (30) days after the last day of Tournament Week (as defined below) of the 2020 FC Cup (as defined below, and such agreement, the "Original Agreement"); and

WHEREAS, Charleston Tennis owns the tournament class membership in, and desires to continue as of the Effective Date to stage and operate, the Family Circle Cup (the "FC Cup"), a Premier Level women's professional tennis tournament sanctioned by the World Tennis Association (herein "WTA"), and desires to continue as of the Effective Date to conduct other events and activities on a year-round basis during the 2014- 2029 calendar years at the Tennis Center and use the Dock in connection therewith; and

WHEREAS, Charleston Tennis and Charleston wish to set forth the terms and conditions pursuant to which Charleston will continue as of the Effective Date to grant Charleston Tennis the lease of and right to use the Tennis Center, the Dock, and other areas of the Park in accordance with the current site plan attached hereto as Exhibit G, to allow Charleston Tennis to stage and operate the FC Cup, manage the Tennis Center on behalf of Charleston, and conduct other events and activities year-round at the Tennis Center.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, the following defined terms shall have the meanings ascribed to such terms as follows:

- 1.1. FC Cup means the annual Premier Level women's professional tennis tournament sanctioned by the WTA Tour and staged and operated by Charleston Tennis, known at the time of execution of this Agreement as the "Family Circle Cup," or any comparable WTA Tour professional tennis tournament staged and operated in place of the FC Cup.
- 1.2. Essential Facilities means certain permanent facilities at the Tennis Center and the Dock, as further described on Exhibit A.
- 1.3. Additional Facilities means the facilities at the Tennis Center as described on Exhibit B.
- 1.4. Manager's Facilities means the existing temporary structures, furniture, trade fixtures, computers and other structures and personal property erected or installed in or at the Tennis Center, or as permitted by Charleston Tennis, in connection with the FC Cup and other events and activities staged, sponsored, conducted or permitted by Charleston Tennis at the Tennis Center or otherwise in connection with managing the Tennis Center, including, but not limited to, those described on Exhibit C hereto.
- 1.5. Tournament Week means the period during which matches are being played in a Tournament, beginning with the preliminary rounds and ending on the date of the championship match.

2. LEASE AND USE OF PARK

- 2.1. Lease and Use of Tennis Center. Subject to paragraph 3.2, Charleston does hereby rent, lease and demise to Charleston Tennis, and Charleston Tennis does hereby rent and lease from Charleston, and Charleston does hereby grant to Charleston Tennis the exclusive right to occupy and use, the Tennis Center to stage and operate the FC Cup and conduct other events and activities year -round at Charleston Tennis' sole discretion, and for all other uses permitted hereunder at Charleston Tennis' sole discretion. This grant and demise shall include all easements and rights-of-way owned or controlled by Charleston and necessary for access, egress and utility service to and from the Tennis Center.
- 2.2. Condemnation of Tennis Center. In the event Charleston is required under law to exercise its powers of condemnation of the Tennis Center, Charleston shall use its best efforts to notify

Charleston Tennis one (1) calendar year in advance of taking possession of the Tennis Center to enable Charleston Tennis to secure an alternative location for the FC Cup and any other events and activities then-scheduled to be held at the Tennis Center.

2.3. Management of Tennis Center. Charleston Tennis shall manage the Tennis Center on behalf of Charleston as a public facility, and in a professional and businesslike manner, as follows:

(a) Charleston Tennis shall make the Tennis Center available and offer tennis lessons, clinics and tournaments, to the general public and, at its discretion, make the Tennis Center available for private parties, memberships or otherwise, except during the duration of, and five (5) days prior to and following, the FC Cup and any other event conducted by Charleston Tennis at the Tennis Center; provided that Charleston Tennis shall not restrict public access to the Tennis Center for more than twelve (12) weeks per year for major events.

(b) Charleston Tennis shall make the Tennis Center available to residents of the City of Charleston pursuant to paragraph 2.3(a) at rates consistent with the rates charged at other tennis facilities with clay courts owned or operated by Charleston.

(c) Charleston Tennis hereby grants Charleston the right to conduct up to two (2) non-tennis-related events at the Tennis Center each year during the Term (as defined in Section 4.1), except during the duration of, and five (5) days prior to and following, the FC Cup and any other event conducted by Charleston Tennis at the Tennis Center, provided that: (i) Charleston is responsible for all costs of staffing, security, ticketing, setting up, breaking down, and cleaning associated with Charleston's use of the Tennis Center for such events, and any unreasonable costs incurred in connection with such use; (ii) Charleston provides Charleston Tennis with reasonable notice of each event; (iii) such events do not otherwise negatively impact Charleston Tennis' business in connection with the Tennis Center, as determined by Charleston Tennis; (iv) Charleston restores the Tennis Center to the condition in which it was prior to each such event, reasonable wear and tear excepted; and (v) Charleston does not grant such right to any third party without Charleston Tennis' prior written consent. Charleston shall use its best efforts to minimize any loss sustained by Charleston Tennis as a result of its exercise of its rights under this paragraph 2.3(c).

(d) Notwithstanding anything to the contrary herein, during any Tournament, access to the Tennis Center shall be restricted to ticket holders, members of the press, authorized personnel of the Tournament, and any other persons specifically authorized or permitted by Charleston Tennis.

2.4 Charleston Tennis' Use of Other Properties.

(a) At Charleston Tennis' request and provided the request does not conflict with a prior scheduled event or use, Charleston shall rent, lease and demise to Charleston Tennis and shall grant the non-exclusive right to occupy and use, all areas, facilities and utilities of the Park other than the Tennis Center appropriate or necessary (as reasonably determined by Charleston Tennis) for staging and operating a WTA Tour professional women's tennis tournament and

conducting any other events or activities, including, but not limited to, all designated parking spaces at the Park, during and in connection with Charleston Tennis' staging and operating the FC Cup and conducting other events and activities at the Tennis Center. Charleston Tennis agrees to restore such areas, facilities and utilities of the Park to the condition as existed prior to their use by Charleston Tennis.

(b) At Charleston Tennis' request and provided such request does not conflict with a prior scheduled event or use, Charleston shall grant Charleston Tennis the non-exclusive right to occupy and use the recreational pier at the Charleston Maritime Center and the Dock during and in connection with Charleston Tennis' staging and operating the FC Cup. Any damage to the recreational pier or Dock resulting from Charleston Center's use thereof shall be the responsibility of Charleston Tennis. Charleston Tennis agrees to restore the recreational pier or Dock to the condition as existed prior to their use by Charleston Tennis.

(c) At Charleston Tennis' reasonable request and provided such request does not conflict with a prior scheduled event or use, Charleston shall grant Charleston Tennis the non-exclusive right to occupy and use other public waterfront properties and facilities, excluding the Waterfront Park, owned or operated by Charleston in connection with Charleston Tennis' staging and operating the FC Cup. Any damage to such other waterfront properties or facilities resulting from Charleston Tennis' use thereof shall be the responsibility of Charleston Tennis. Charleston Tennis agrees to restore such other waterfront properties and facilities to the condition as existed prior to their use by Charleston Tennis.

2.5 Operation of the FC Cup. Charleston Tennis shall stage and operate the FC Cup at the Tennis Center at its sole cost and expense. Charleston Tennis shall be responsible, at its sole cost and expense, for making any temporary modifications or alterations to the Tennis Center in connection with staging and operating the FC Cup.

2.6 Operation of Other Events and Activities. Charleston Tennis may, but is under no obligation to, conduct other events and activities at the Tennis Center, including, but not limited to, sports, musical and cultural events that are consistent with applicable zoning and other ordinances or regulations, at any time during each year of the Term. Charleston Tennis shall be responsible, at its sole cost and expense, for making any temporary modifications or alterations to the Tennis Center in connection with conducting such events and activities.

2.7. Permits and Licenses. Charleston hereby represents and warrants that, to the best of its knowledge, all permits and licenses required by any government entity on the Effective Date for staging and operating the FC Cup and conducting other events and activities are listed on Exhibit D hereto. Charleston shall notify Charleston Tennis of any change in such permit and license requirements of which it becomes aware and amend Exhibit D from time to time as applicable. Charleston Tennis shall obtain all such licenses and permits in a timely manner as required by the relevant authorities. At Charleston Tennis' request, Charleston shall assist Charleston Tennis in obtaining such licenses and permits.

2.8. Other FC Cup and Event Obligation. Except as otherwise specifically set forth in this Agreement, all duties, responsibilities and obligations that are necessary or appropriate to stage

and operate the FC Cup and to conduct other Charleston Tennis-sponsored or permitted events and activities at the Tennis Center as contemplated hereunder, including payment of admission, retail sales and other taxes, shall be the duties, responsibilities and obligations of Charleston Tennis.

2.9. Re-naming of Stadium. Charleston hereby grants Charleston Tennis and any third party entity that acquires rights to the FC Cup the right to re-name the Family Circle Stadium, provided that the new name does not negatively impact the Tennis Center's image as a family-oriented, wholesome sports and recreational facility.

3. MAINTENANCE AND REPAIR OF TENNIS CENTER

3.1. Charleston Tennis's Obligations. Charleston Tennis shall be responsible for the following upon undertaking operation of the Tennis Center in accordance with this Agreement:

(a) Prior to the expiration or earlier termination of this Agreement, the construction, installation, maintenance and dismantling of Manager's Facilities as solely determined by Charleston Tennis;

(b) Any damage caused to the Tennis Center resulting from the construction, installation, maintenance or dismantling of Manager's Facilities, provided that Charleston provides Charleston Tennis with a detailed map of all power and water lines of the Tennis Center;

(c) Maintenance of the Grounds to standards at least comparable to other tennis facilities owned and operated by Charleston, provided that Charleston provides technical assistance to Charleston Tennis in so maintaining the Grounds upon Charleston Tennis' request, and at Charleston Tennis' direction, other than maintenance to repair damage caused by Charleston's acts or omissions, for which Charleston shall be solely responsible;

(d) Day-to-day non-structural maintenance of the Tennis Center, including, but not limited to, rolling, line brushing, watering, power washing, and resurfacing of the tennis courts;

(e) Reasonably necessary structural maintenance of the Tennis Center (including, but not limited to, painting, plumbing and electrical maintenance), up to a maximum of ten thousand dollars (\$10,000) per year in total, other than maintenance to repair damage caused by Charleston's acts or omissions, for which Charleston shall be solely responsible; provided however, any structural damage to the Tennis Center caused by Charleston Tennis' acts or omissions shall be the sole responsibility of Charleston Tennis.

(f) Payment of ad valorem taxes, if applicable, except that Charleston shall reimburse Charleston Tennis that portion of the tax bill applicable to the real estate on which the Tennis Center is located that Berkeley County may remit to Charleston, provided that Charleston Tennis uses any such reimbursement to offset its costs of managing the Tennis Center in accordance with this Agreement; and

(g) Payment of all customary fees for Charleston Tennis' use of the public utilities and garbage removal services and other applicable customary user fees associated with Charleston Tennis' use of the Tennis Center, provided that Charleston shall impose City of Charleston municipal fees only if and to the extent it imposes such fees on like facilities.

3.2. Charleston's Obligations.

(a) In recognition of Charleston Tennis' expertise in the management, operation and maintenance of professional level sporting venues, and in consideration of its managing the Tennis Center and assuming maintenance and operational costs of the Tennis Center that would otherwise be borne by Charleston, Charleston agrees to pay Charleston Tennis an annual management fee of \$225,000 for each calendar year of the Term, said fee to be increased at the rate of 3% per calendar year during the Term. The fee for calendar years subsequent to the Effective Date shall be payable by June 30 of such year.

(b) Except as provided in Sec. 3.1, Charleston shall be responsible for all capital and structural repairs of the Tennis Center, including, but not limited to: (i) structural upgrades required by the WTA Tour to meet the standards of grounds and facilities at which other WTA Tour tennis tournaments comparable to the FC Cup are staged and operated; and (ii) repairs due to reasonable wear and tear; and (iii) subject to paragraph 3.2 (d), damage caused by casualties and events or occurrences beyond the parties' control, including, without limitation, hurricanes, tornados, wind storms, other extreme weather conditions, fire, flood, other acts of God, strikes, lock-outs, war and civil unrest (events of Force Majeure"). In any event of Force Majeure, Charleston shall repair and restore the affected portion of the Tennis Center to its former condition as soon as possible thereafter.

(c) Notwithstanding paragraph 3.2(a), if after written notice from Charleston Tennis that maintenance or repairs are required, Charleston fails to perform such maintenance or repairs within a reasonable period of time, Charleston Tennis may perform such maintenance or repairs, the cost of which shall be paid by Charleston no later than thirty (30) days after the end of each calendar year in which Charleston Tennis incurs such costs, if applicable, upon receipt of invoices therefor.

(d) Charleston shall pay the costs of all maintenance and repair specified in paragraph 3.2(b) (iii) up to the amount covered by Charleston's insurance policies, the minimum coverage limits of which are set forth on Exhibit E hereto. Each of the parties shall pay one-half (1/2) of the remaining cost, if any, of such maintenance and repair.

(e) Charleston shall be responsible for any reasonably necessary structural maintenance described in paragraph 3.1 (e) in excess of ten thousand dollars (\$10,000) per year, unless such damage is caused by the acts or omissions of Charleston Tennis, in which case Charleston Tennis shall be solely responsible for the same. In the event Charleston fails to perform such maintenance within a reasonable period of time, Charleston Tennis may relieve Charleston of its further obligations in connection therewith and perform such maintenance, the cost of which shall be paid by Charleston no later than thirty (30) days after the end of each calendar year in which Charleston Tennis incurs such costs, if applicable, upon receipt of invoices therefor.

(f) Charleston shall grade and grass, and maintain the path around the waterside perimeter in that portion of the Park north of the Tennis Center, and shall maintain all areas, facilities and utilities therein in a clean and safe condition in accordance with standards at least comparable to the condition of other passive parks owned or operated by Charleston. A "passive park" for purposes of this paragraph 3.2(f) is a park that is used for leisure purposes only and does not contain sports or other active recreational facilities, including, but not limited to, stadiums, courts, ball fields and concert halls.

4. TERM AND TERMINATION

4.1. Term. The term of this Agreement shall commence on the Effective Date and end on the date thirty (30) days after the last day of Tournament Week of the 2029 Tournament, unless earlier terminated under this Section 4 (the "Term").

4.2. Renewal. Charleston and Charleston Tennis acknowledge and agree that as of January 2, 2028, the parties will commence good faith negotiations to amend or renew this Agreement or to enter into a new agreement regarding the subject matter hereof.

4.3. Termination. This Agreement may be terminated without penalty prior to the expiration of the Term as follows:

(a) by the mutual agreement of Charleston and Charleston Tennis at any time;

(b) at the election of Charleston Tennis, if by June 1st of any year of the Term, it provides written notice of termination to Charleston, in which case Charleston Tennis shall be required to manage and operate the Tennis Center pursuant to Section 4.3 until December 31 of the year in which the termination is to take effect, and in which case Charleston shall not be obligated to make any payments required by paragraph 3.2 (a) to Charleston Tennis for the calendar year when the termination is to take effect; and

(c) at the election of either party immediately upon notice by such party to the other party if the other party, after receipt of written notice, fails to cure, within sixty (60) days of receipt of such written notice and any additional time that may be reasonably necessary under the circumstances (provided such party is diligently proceeding in good faith to cure), any breach of a material provision of this Agreement.

4.4. Removal of Manager's Facilities. At the expiration of the Term or earlier termination of this Agreement, Charleston Tennis shall remove then existing Manager's Facilities from the Tennis Center, repair any damage that may be caused thereby and restore the Tennis Center to a clean, graded, well-drained and safe condition.

5. LIABILITY AND INDEMNIFICATION

5.1. Environmental Conditions.

(a) Charleston's Warranty, Representation and Liability.

(i) Charleston hereby warrants and represents to Charleston Tennis that as of the Effective Date, it is unaware of any violation of any federal, state or local environmental laws or regulations in connection with the real property on which the Tennis Center is located. Charleston further warrants and represents that it shall be responsible for any violation of any federal, state or local environmental laws or regulations to the extent caused by Charleston on or after the Effective Date.

(ii) Charleston hereby assumes full and complete responsibility for all costs and expenses arising from a breach of this warranty and representation or any pre-existing condition, to the extent permitted by law, and shall remedy any violation by it of such environmental laws or regulations as soon as practicable to the extent permitted by law. This paragraph 7.1 (a) shall survive expiration or termination of this Agreement.

(b) Charleston Tennis' Warranty, Representation and Liability.

(i) Charleston Tennis hereby warrants and represents to Charleston that it shall operate and manage the Tennis Center in full compliance with all federal, state and local environmental laws and regulations.

(ii) Charleston Tennis shall indemnify and hold harmless Charleston and its shareholders, officials, officers, directors, attorneys, agents, representatives, successors or assigns in respect of the aggregate of all damages to Charleston arising from a breach of this warranty and representation and shall remedy any violation by it of such environmental laws or regulations as soon as practicable to the extent permitted by law. This paragraph 7.1 (b) shall survive expiration or termination of this Agreement.

5.2. Charleston's Liability to Third Parties. Charleston hereby assumes full and complete responsibility for injury to persons (including death resulting therefrom) and damage to third party property occurring on the premises of the Park, including, but not limited to, the Tennis Center, to the extent resulting from (a) any inaccurate representation or warranty made by Charleston hereunder; (b) any default, negligence or misconduct in the performance of any of the covenants or agreements made by, or any of the obligations of, Charleston in this Agreement, latent defects of the Essential Facilities or otherwise at the Park or Tennis Center that Charleston knew or should have known existed prior to such injury or damage.

5.3. Indemnification by Charleston Tennis. Charleston Tennis shall indemnify and hold harmless Charleston and its shareholders, officials, officers, directors, attorneys, agents, representatives, successors or assigns from and against all claims, expenses, losses, costs, deficiencies, liabilities and damages (including reasonable counsel fees and expenses) incurred or suffered by Charleston to the extent resulting from: (a) any inaccurate representation or warranty

made by Charleston Tennis hereunder; or (b) any negligence or misconduct in the performance of any of the covenants or agreements made by, or any of the obligations of, Charleston Tennis in this Agreement.

6. INSURANCE

6.1. Charleston Tennis Insurance. Charleston Tennis shall procure and maintain at all times during the Term commercial general liability insurance, property insurance, workers compensation insurance, employer's liability insurance and vehicular liability insurance in the amounts as the parties shall agree, issued by insurance companies reasonably acceptable to Charleston, and such additional insurance as may be required by local, state, or federal governments or regulatory authorities in connection with its staging and operation of the FC Cup, management of the Tennis Center and conduct of other sports events and activities at the Tennis Center as contemplated hereunder. Charleston shall not be named as an additional insured on said policy or policies. Promptly after execution of this Agreement, Charleston Tennis shall provide Charleston with acceptable certificates of insurance evidencing the existence of the insurance coverage described herein.

6.2. Charleston Insurance. Charleston shall procure and maintain at all times during the Term insurance of the types and in the amounts shown on Exhibit E issued by the South Carolina Insurance Reserve Fund or such other insuring entity it deems acceptable, and such additional insurance as may be required by local, state, or federal governments or regulatory authorities in connection with its ownership of the Tennis Center as contemplated hereunder. Charleston Tennis shall not be named as an additional insured on said policies. Promptly after execution of this Agreement, Charleston shall provide Charleston Tennis with acceptable certificates of insurance evidencing the existence of the insurance coverage described herein.

7. MISCELLANEOUS

7.1. Agents of the Parties. Each party acknowledges and agrees that during the Term, all employees, independent contractors, representatives and agents of it performing services for it pursuant to this Agreement, including, without limitation, contractors, vendors, sponsors, security persons, officers or employers, whether or not such services are being performed at the Tennis Center and regardless of the nature of the services being performed, are exclusively employed or retained by such party and not the other. Except as otherwise specifically set forth herein, each party acknowledges that it is its sole responsibility to hire, train, supervise, discipline, and direct the time, manner and method of accomplishing the work to be performed by such persons or entities. Charleston Tennis also acknowledges that it is solely responsible to compensate its employees, independent contractors, representatives and agents for products and services provided by them and to pay all applicable employment and other withholding taxes with respect to such persons. Nothing herein shall be deemed to constitute a joint venture or partnership between Charleston Tennis and Charleston.

(a) DBE/WBE Goals for Vendors at the Tennis Center shall be 20%-combined participation. These goals shall apply to all vendor contracts with Charleston Tennis at the

Tennis Center. For purposes of this paragraph, DBE/WBE shall be defined as a small business owned and controlled by minorities or owned and controlled by women. This means that 51% of the business must be owned by minorities or women and they must control the management and daily operations of the business

(b) Charleston Tennis shall coordinate its efforts to meet the above-stated DBE/WBE goals with Charleston's Minority Business Office, Department of Budget, Finance and Revenue Collections (BFRC), P.O. Box 304, SC 29402. The present contact person is Theron Snape. The phone number is 843-973-7247.

7.2. License of Trademarks.

(a) Charleston Tennis hereby grants Charleston the right to use the Charleston Tennis and FC Cup names, trademarks and logos (the "FC Cup Trademarks") solely for the purpose of promoting and advertising the FC Cup and Charleston's association therewith. All such use shall be subject to Charleston Tennis' prior approval, said approval not to be unreasonably withheld, and all goodwill associated therewith shall inure to the benefit of G+1. Charleston Tennis hereby represents and warrants that the FC Cup Trademarks do not violate or infringe upon the rights of any third party.

(b) Charleston hereby grants Charleston Tennis the right to use the City of Charleston's names, trademarks and logos (the "Charleston Trademarks") solely for the purpose of promoting and advertising the FC Cup and Charleston. All such use shall be subject to Charleston's prior approval, said approval not to be unreasonably withheld, and all goodwill associated therewith shall inure to the benefit of Charleston. Charleston hereby represents and warrants that the Charleston Trademarks do not violate or infringe upon the rights of any third party.

(c) Notwithstanding the foregoing, neither party shall have the right to sell products or services using the other party's trademarks or logos without the other party's prior approval.

7.3. Ticket Holders. Charleston Tennis and Charleston acknowledge and agree that the list of ticket holders is the sole and exclusive property of Charleston Tennis. To the extent legally permissible, Charleston Tennis shall provide Charleston reasonable access to the list of ticket holders for the sole purpose of promoting the FC Cup.

7.4. Certificate as to No Default, etc.: Information. Either party shall deliver to the other within ten (10) business days after written request, an officer's certificate stating: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications); (ii) the dates to which payments hereunder have been paid; (iii) that no default exists hereunder, or, if any such default exists, specifying the nature and period of existence thereof; and (iv) such other information with respect to the party and the subject matter of this Agreement from time to time may reasonably be requested. Any such officer's certificate may be relied upon by any prospective purchaser or mortgagee, if applicable, of the

Tennis Center or any part thereof or interest therein.

7.5. Covenant of Quiet Enjoyment. If Charleston Tennis fulfills its obligations hereunder in accordance with the terms of this Agreement, Charleston covenants that Charleston Tennis shall have peaceful and quiet occupation, possession and enjoyment of the Tennis Center and appurtenances, free and clear of any interference from anyone other than persons claiming by, through or under Charleston Tennis.

7.6. Memorandum of Agreement. This Agreement shall not be recorded; however, at the request of either party, a short memorandum of this Agreement may be recorded in the office of the Registers of Mense Conveyances for Berkeley County.

7.7. No Broker. Each party represents and warrants to the other that it has not dealt with any broker in connection with this Agreement and the subject transaction.

7.8. Amendments and Waivers; Cumulative Remedies. This Agreement may not be amended or modified in any manner except by an instrument in writing signed by each of the parties. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision or the right of either party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, all remedies are cumulative, including the right of either party to seek equitable relief in addition to money damages unless otherwise stipulated in this Agreement.

7.9. Force Majeure. Neither party shall be responsible for or have any liability associated with any failure or delay, and such failure or delay shall not constitute a default under of breach of this Agreement, for any period and to the extent that the failure or delay is due in whole or in part to any cause beyond such party's reasonable control, including, but not limited to, acts of God, nature, fires, floods, earthquakes, explosions, epidemics, riots, insurrections, revolutions, wars (declared and undeclared), terrorism, sabotage, strikes, lockouts plant shutdowns, labor shortages, freight embargoes, unusually severe weather, unavailability of supplies or sources of energy, delay or interruptions to transportation, acts of government (other than such party, if applicable) in either its sovereign or contractual capacity, voluntary or involuntary compliance with a later-enacted law, order, regulation, rule or request of any governmental authority (other than such party, if applicable), or any other event or force majeure (each, an event of "Force Majeure"). Upon any such event, the affected party immediately shall notify the other party in writing of such event and the nature and extent of its effect on such party's performance hereunder and use its best efforts to protect against and minimize any failure or delay associated therewith.

7.10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, heirs, legal representatives and assigns. Charleston shall not have the right to assign or transfer any of its rights or obligations under this Agreement, mortgage or otherwise encumber the Tennis Center, or pledge its rights pursuant to this Agreement as collateral, without the prior written consent of Charleston Tennis. Charleston Tennis shall not have the right to assign or transfer its rights and obligations under this Agreement except to a wholly owned subsidiary of, or entity under common ownership or

control with, Charleston Tennis, or to pledge its rights pursuant to this Agreement as collateral, without the prior written consent of Charleston.

7.11. Leasehold and Business Financing.

(a) Leasehold and Business Financing. Neither party shall borrow against this Agreement or the leasehold, or any part or parts thereof, or finance, encumber or assign any part or parts thereof as security for the loan, without the prior approval of the other party.

(b) Lender's Rights. If either party (as such, the "Financing Party") obtains the approval of the other party (as such, the "Non-Financing Party") pursuant to paragraph 7.11 (a) and finances as aforesaid, then and in such event, as long as any such financing shall remain unsatisfied, or until written notice of satisfaction is given by the holder to the Financing Party, the parties shall amend this Agreement to include provisions granting Lender rights of notification and consent with respect to any termination, cancellation, surrender or modification of this Agreement.

7.12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, heirs, legal representatives and assigns.

7.13. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and is not intended for the use and benefit of any other party. Nothing contained in this Agreement is intended to make any person or entity that is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

7.14. Severability. Each particular prohibition or restriction set forth in any section or paragraph of this Agreement shall be deemed a severable unit, and if any court of competent jurisdiction determines that any portion of such restraint, or the application thereof, is against the policy of the law in any respect, but such restraint, considered as a whole, is not so clearly unreasonable and overreaching in its terms as to be unconscionable, the court shall enforce so much of such restraint as it determines by a preponderance of the evidence to be necessary to protect the interests of the parties hereto. If any one or more of said provisions is determined to be invalid, illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provisions to the extent enforceable, shall be binding and enforceable.

7.15. Entire Agreement. This Agreement, including all Exhibits attached hereto, represents the entire and integrated agreement by and between Charleston Tennis and Charleston and supersedes all prior negotiations, representations or agreements, either written or oral, between the parties on the subject matter hereof, including, but not limited to, the Original Agreement. The waiver by either party of a breach of any provision of this Agreement shall not constitute a waiver of a subsequent breach of such provision or any remaining provision of this Agreement.

7.16. Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement. References to "Sections" and "paragraphs," unless otherwise stated, refer to sections and paragraphs of this Agreement.

7.17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

7.18. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina.

7.19. Notices. All notices, consents, approvals and the like required under any of the provisions of this Agreement shall be in writing and shall be deemed to be effective (a) if personally delivered or sent by overnight courier (such as Federal Express), upon delivery, (b) if sent by Facsimile, upon successful transmission, or (c) if sent by U.S. mail registered or certified return receipt requested, with sufficient postage affixed thereto, addressed as follows, upon receipt.

(a) If to Charleston, to:

City of Charleston Legal Department
50 Broad Street
Charleston, SC 29401
Fax: 843-724-2706

With a copy to:

City of Charleston Real Estate Division
P.O. Box 304
Charleston, SC 29402

(b) If to Charleston Tennis, to:

Tom Harty, President, National Media Group
Meredith Corporation
805 Third Avenue
New York, NY 10022
Fax: 212-551-7154

With a copy to:

General Counsel, National Media & Marketing
Meredith Corporation
805 Third Avenue
New York, NY 10022
Fax: 212-499-2199

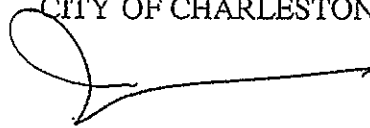
or as may be otherwise specified by either party by notice to the other party. At either party's request, the other party promptly shall designate an individual who shall be authorized to receive service of process in connection with any disputes or litigation arising out of this Agreement.

IN WITNEESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

Debra Matthews

CITY OF CHARLESTON



By: _____
Its: Mayor

CHARLESTON TENNIS, LLC

By: Nancy W. Weber
Its: EVP, CMO

EXHIBIT A

Tennis Center and Dock *Essential Facilities*

FAMILY CIRCLE STADIUM

Structure:

- Circular Shape
- Capacity for temporary bleachers to be set up in the north, south, east and west end zones

Seating:

- Box seats: at least three thousand five hundred (3,500) seats approximately 1,485 in boxes with chair backs surrounding the Family Circle stadium
- First eight (8) rows on the east and west sides and first six (6) rows on the north and south sides, seats configured for six (6) seat boxes, three (3) per row; remaining seats without divider rails
- Each seat approximately sixteen (16) inches to eighteen (18) inches in width
- Each seat reflex blue color (or color otherwise agreed upon by the parties) with cup holder
- Each seat individually numbered
- Space for approximately thirty-five (35) champagne tables located at top of Stadium on widened aisle, sectioned from walkway, with the ability for tables to be bolted down
- Temporary seating: area for six thousand five hundred (6,500) additional seats
- Ability to access concession stands and restrooms
- Permanent press box (instead of a stage)
- Area on center court, lower than lowest box seats, for handicapped and photographers

Staging Entrance:

- Located in the west end zone of the Family Circle Stadium
- Approximately nine (9) feet high x twelve (12) feet wide

Court Surface:

- Above-surface irrigation system with pop-up heads
- Lee Fast dry clay
- Standard tape

Lighting:

- At least one (1) extension at each corner of the Family Circle Stadium
- One hundred (100) foot candles measuring thirty-six (36) inches above the court surface, with uniformity ratios of 1.5: 1 inside the doubles boundaries, 2: 1 at ten (10) feet behind the baseline, and 2: 1 outside the doubles boundaries
- Otherwise meeting WTA Tour and television requirements

Sound System:

- Capable of supporting the Permanent Stadium with power to allow for temporary seating

Scoreboards:

- Two (2) LED matrix scoreboards with custom text software, approximately 5'5" x 14' in size

SATELLITE COURTS

Courts:

- At least seventeen (17) tennis courts, laid out as follows:
- ten (10) clay courts (comprised of five (5) clay courts in banks of two (2))
- three (3) stand-alone clay courts
- four (4) hard courts (comprised of two (2) hard courts in banks of two (2))
- Each bank of two (2) tennis courts to measure one hundred twenty (120) feet x one hundred twenty (120) feet
- Each tennis court to be constructed with the "California" corner design
- At least one (1) practice wall

Fencing:

Jet black, vinyl-coated sleeved removable fencing

Four (4)-foot fencing installed along sixty (60) feet of the one hundred twenty (120) foot sides of the banks of each two (2) tennis courts

Lighting:

- Club level lighting on all Satellite Courts
- Environmental, low-level

Walkways:

- Seven to eight (7-8)-foot wide walkways located between tennis courts
- Each walkway composed of concrete or sand shell

Rest Station:

- Located immediately adjacent to each bank of tennis courts
- Each to contain at least one (1) canopy

GROUND

Tournament Main Entrance:

- Located such that all spectators must pass the main entrance before entering the tennis grounds
- Plaza in stamped concrete or paved with concrete accent
- Bus drop-off from off-site parking

On-Site Parking:

- One hundred Forty (140) spaces at the entrance drive
- Eighty (80) spaces at the Racquet Club
- Three hundred thirty (330) grass spaces within walking distance to Tennis Center, located north of the Mark Clark
- Spaces on any land controlled by Charleston as available for use by FC Cup patrons, spectators and volunteers, located adjacent to the Tennis Center

Media Support:

- Area for three (3) semi-trailers, two (2) office trailers and one (1) satellite dish
- Area along Seven Farms Road
- Video hook-ups from stanchions
- Cabling to Press Box and Interview Room at Racquet Club

Landscaping:

- Located around the Family Circle Stadium, satellite courts and next to the walkways between the satellite courts
- Natural grass
- Trees including palm trees
- Flowering shrubs
- Flower beds
- Irrigation system

Electrical Requirements:

- Television: five hundred (500) amps, three (3) phase
- Family Circle Stadium lights: four hundred (400) amps, three (3) phase
- Media tent: six hundred (600) amps with AC
- Hospitality tent: five hundred (500) amps with AC
- Sponsor Row: two thousand one hundred (2,100) amps
- Food Court: three thousand one hundred (3,100) amps
- Concerts
- Two thousand four hundred (2,400) amps, three (3) phase one thousand two hundred (1,200) amps, three (3) phase
- Trailers: one hundred (100) amps for each eight (8) trailers
- Merchandise tent: six hundred (600) amps with AC
- Fan Zone: one hundred (100) amps

Lights: four hundred (400) amps, three (3) phase

Detention Pond

- See Site Plan (Exhibit G) for location
- To be available for storm water drainage for the Tennis Center

DOCK

Dock:

- Fixed pier and pierhead (8' x 175', 20' x 20')
- Gangway: (one at 4' x 70' for ADA compliance)
- Floating dock (one at 12' x' 50')
- Floating dock piles and mooring piles (dolphins)
- Handrails (400 linear feet)
- Miscellaneous (utilities, lighting)

Boardwalk:

- Path system from Dock to Tennis Center
- Timber bridges with handrails with two (2) wider areas to accommodate access and/or observation (total 6' x 350' with two landings)
- Soft-surface path on land connecting the two (2) wooden structures

EXHIBIT B

Tennis Center *Additional Facilities*

FAMILY CIRCLE STADIUM

Structure: Lower level in brick veneer and/or stucco; remainder exposed

Concession Stands:

- Four (4) concession stands in the Family Circle Stadium, to be accessible when temporary seating
- is installed
- Each concession stand to include:
- One (1) sink
- Roll-down door at counter
- Full-length counter with HC access
- Electric outlets on side walls
- Painted masonry walls
- Slat wall on rear wall

Restrooms:

Adequate number of restrooms to meet all applicable code requirements for a three thousand five hundred (3,500) seat stadium

- Two (2) men's restrooms
- Two (2) women's restrooms
- Two (2) private restrooms

Capability for temporary restroom facilities to be installed by Charleston Tennis to accommodate additional temporary seating

Storage areas:

- Tournament storage
- 1,200 square feet of storage, with some areas having fifteen (15) foot ceilings
- Ability to store umpire chairs, banners, signs, Tournament support supplies, maintenance equipment
- Fork-lift accessible
- Painted block walls
- Suitable lighting

Sponsor storage:

- 1,200 square feet of storage, with some areas having fifteen (15) foot ceilings
- Fork-lift accessible
- Painted block walls
- Suitable lighting
- Wall between Tournament and Sponsor storage areas

Family Circle Cup Workshop:

- Eight Hundred (800) square feet of open space

RACQUET CLUB

Ground Floor:

- Total dimensions of not less than five thousand (5,000) square feet
- Tennis pro shop

Merchandise area:

- Racquet stringing room
- Sales check-out area centralized in merchandise area
- Scheduling and information counter
- Pro Shop manager's office
- Business office
- Merchandise storage
- Two (2) fitting rooms

One (1) men's bathroom locker room with at least four (4) showers, two (2) standing
johns (1 handicapped), one (1) stall, ten (10) lockers and one (1) sink

One women's bathroom/locker room with at least four (4) showers, three (3) stalls (one
handicapped), ten lockers and one (1) sink

Area for FC Cup history display

Director of tennis office

One (1) tennis pro office

One (1) pro shop manager office

Multi-use indoor area

Mechanical room

Two (2) Jock out bathrooms, one (1) male and one (1) female

Second Floor:

- Total dimensions of not less than five thousand (5,000) square feet
- Indoor space for one (1) Tournament player hospitality area lounge/conference room that opens up to an adjacent outdoor patio/deck with a view of the tennis courts
- One (1) executive office lounge that opens up to a patio/deck, space for conference table seating eight-ten (8-10) persons, snack bar
- Space for six (6) offices and nine (9) cubicles
- Reception room, bathrooms and kitchen for cold prep only
- Offices convertible for use by the WTA Tour and player services
- Capability for Charleston Tennis to divide certain offices specified by Charleston Tennis
- Multi- use work-out room of at least six hundred (600) square feet

Design:

- "Low country" decor

- Porches/decks located at front and back of Racquet Club, overlooking grounds
- Light and airy feeling

Racquet Club Court:

- Above-surface irrigation system with pop-up heads
- Lee Fast dry green clay
- Standard tape
- High mast lighting a Plaza seating an Elevated deck surrounding court

EXHIBIT C

Tennis Center *Manager's Facilities*

Tents and Booths

- Press Center (40' x 100')
- Merchandise Tent (40' x 100')
- Family Circle Hospitality Area (40' x 100') with 20' deck along the water
- Volunteer Tent (20' x 60')
- Fan Zone (20' x 40')
- Kids' Zone (30' x 80')
- Cyber Cafe Booth (20' x 30')
- Additional Food Tents (x 4) (20' x 20')

**Some of the tents above could be placed on unused satellite courts*

Main Entrance

- Ticket area (20' x 30') and approximately eighteen (18) "sponsor row" booths (each 10' x 10') aligned on each side of the entrance space

Family Circle Stadium Seating

- Bleachers at the north, south and west end zones of the Family Circle Stadium

Restroom Facilities

- Sufficient Number to accommodate temporary stadium seating

EXHIBIT D

Permits and Licenses

1. Business license (required by State of South Carolina)
2. Liquor license (required by State of South Carolina)
3. Event permit (required by Charleston or other governmental entity, if applicable)
4. Food permit (required by DHEC, if applicable)
5. Temporary structure permit (required by Charleston, DHEC or other governmental entity, if applicable)

EXHIBIT E

Charleston's Insurance Policies

1. Comprehensive General Liability and Property Insurance with combined single liability limits for personal injury or death and property damage in the amount of \$600,000 per occurrence.
2. Property and Casualty Insurance for the replacement value of the Tennis Center and any portion thereof, on an all-risk of physical loss or damage basis, including fire, earthquake, hazard, flood and windstorm.
3. Workmen's Compensation Liability Insurance with liability limits as required by law.
4. Employer's Liability Insurance with liability limits for bodily injury in the amount of \$600,000 per occurrence.
5. Vehicular Liability Insurance with combined single liability limits for personal injury or death and property damage in the amount of \$600,000 per occurrence.

EXHIBIT G
Current Site Plan

